आर्यपथ के नियम—

(१) यह पत्र प्राचीन वैदिक विचारधारा का प्रचारक और आर्य ऋषियों द्वारा प्रचारित संस्कृति के पुनरुत्थान का पक्षपाती मासिक पत्र है।

(२) यह पत्र प्रतिमास १५ वीं तिथि को प्रकाशित होता है। यदि दिनांक २५ तक न पहुँचे तो तत्काल सूचना देने पर दूसरी प्रति भेजी जा सकती है।

(३) वार्षिक मूल्य ३) रु० धनादेश [मनी आर्डर] द्वारा अग्रिम भेजना चाहिये। वी० पी० मंगवाने में ग्राहक को ५० न० पै० अधिक देने पड़ते हैं।

(४) आर्यपथ का नया वर्ष मार्च [फाल्गुन] से होता है। वर्ष का प्रथम अंक विशेषांक होता है।

(५) आर्यपथ के ग्राहक किसी भी मास से बन सकते हैं।

(६) प्रकाशनार्थ लेख और रचनायें सम्पादक आर्यपथ, आर्यसमाज, रातानाडा, जोधपुर के पते से आने चाहिये। लेख सरल, संक्षिप्त, सारगर्भित और मौलिक हों। सैद्धान्तिक और आर्यसमाज की जीवन्त समस्याओं के सम्बन्ध में आलोचनात्मक और विवेचनात्मक लेखों को प्राथमिकता दी जायेगी लेख स्पष्ट और शुद्ध हों, तथा कागज के एक ओर लिखे हों। उनका प्रकाशित करना या न करना अथवा संशोधित करना सम्पादक के आधीन होगा। अन्यत्र प्रकाशित रचनाओं को स्थान नहीं दिया जायेगा। डाक व्यय प्राप्त होने पर अस्वीकृत रचनायें लौटाई जा सकेंगी।

(७) विज्ञापन के लिये अग्रिम धन का आना आवश्यक है। सम्पूर्ण पृष्ठ के १०) रु० और आधे पृष्ठ के ५) रु०। अश्लील और गर्हित रुचि के विज्ञापन नहीं छापे जायेंगे।

(८) पत्र व्यवहार के समय ग्राहक संख्या अवश्य लिखें।

(९) पत्र की सामग्री और उसके बाह्य प्रसाधन के सम्बन्ध में पाठकों से सुझाव भेजने की प्रार्थना की जाती है।

(१०) पत्र का नमूना निःशुल्क भेजा जाता है।



श्री विद्यानन्द विदेह और आर्यसमाज मे अनुशासन की समस्या

हमारे पाठकों को यह विदित ही होगा कि सार्वदेशिक सभा ने श्री विद्यानन्द विदेह के लिये आर्यसमाज की वेदी बंद करदी है। श्री विद्यानन्द विदेह ने अभी हाल ही में एक विस्तृत वक्तव्य 'अपनों से अपनी बात' शीर्षक प्रकाशित करा कर समस्त आर्यसमाजों को भेजा है। इसका अधिकृत उत्तर जहाँ तक हमें ज्ञात है अभी तक सार्वदेशिक सभा द्वारा नहीं दिया गया, यद्यपि 'सार्वदेशिक' की एक सम्पादकीय टिप्पणी में विदेह जी के उक्त वक्तव्य की आलोचना की गई है। हम उस दिन की प्रतीक्षा में हैं जब कि हमारी शिरोमणि सभा के पदाधिकारी इस वक्तव्य पर अपना निर्णयात्मक मत व्यक्त करेंगे। अस्तु।

विदेह जी के इस वक्तव्य से कई बातें सामने आती हैं। उन्होंने कुछ व्यक्तियों पर यह आरोप लगाया है कि वे उनकी प्रगति और बढती हुई लोकप्रियता को सहन नहीं कर सके, उन्होंने विदेह जी के विरूद्ध वातावरण तैयार किया और ऐसी परिस्थितियाँ उत्पन्न कर दी, जिसके परिणाम स्वरूप सार्वदेशिक सभा को उनके लिये आर्यसमाज की वेदी बंद करनी पड़ी। विदेह जी के इस कथन में कितनी सत्यता है, हम नहीं कह सकते। परन्तु यह भी निश्चित है कि विदेह जी स्वयं पथ भ्रष्ट हो रहे थे अथवा हो गये थे। धर्मार्य सभा के समक्ष अपनी भूलों को स्वीकार करना यह सिद्ध करता है कि उनके विरुद्ध लगाये गये आरोपों में पर्याप्त सत्यता थी। उन्होंने सार्वदेशिक सभा को यह विश्वास भी दिलाया कि वे अपने ग्रन्थों में आवश्यक संशोधन कर देंगे और जब तक यह नहीं होगा, उनके ग्रन्थों का वितरण बंद रक्खा जायगा।

विदेहजी ने अपने वचन का पालन नहीं किया। धर्मार्यसभा के समक्ष अपनी भूलों को स्वीकार करने के तुरन्त बाद ही वे अफ्रीका चले गये और वहाँ उन्होंने वेद भाष्य के नाम पर पर्याप्त धन संग्रह किया। जब सार्वदेशिक सभा ने उनके लिये समाज की वेदी बंद कर दी तब तो उनमें प्रतिशोधाग्नि तीव्रता से धधक उठी और उनका यथार्थ स्वरूप लोगों के समक्ष आ गया। विदेहजी का अहं बड़ा प्रबल है। वे अपने मुंह से ऋषि दयानन्द का चाहे कितना ही गुणगान क्यों न करें, अपने वेद व्याख्या ग्रन्थों में ऋषि का उल्लेख न करना उनको नकली ऋषि भक्ति का पर्दाफाश कर देता है और आर्यसमाज के प्रवर्तक के प्रति उनकी घोर कृतघ्नता का सूचक है। आर्य समाज से बहिष्कृत होने के पश्चात् विदेह जी ने अपने मासिक पत्र 'सविता' मे प्रत्यक्ष या परोक्ष रूप में आर्यसमाज के सम्बन्ध में जो कुछ लिखा, उससे आर्यसमाज के विरोधियों के ही हाथ मजबूत हो सकते हैं।

इधर अपना वक्तव्य प्रकाशित कराने के पश्चात् उनका रुख कुछ बदला हुआ अवश्य प्रतीत होता है।

हम यह तो नहीं कह सकते कि इस दुर्भाग्य पूर्ण परिस्थिति का अन्त कब और किस प्रकार होगा क्यों कि हमें विदेहजी और आर्यसमाज में कुछ मौलिक मतभेद दृष्टिगोचर हो रहा है, परन्तु यहाँ प्रसंगवश हम आर्यसमाज में अनुशासन की समस्या पर कुछ महत्व पूर्ण बातें लिख देना भी आवश्यक समझते है।

विदेहजी के आर्यसमाज से बहिष्कृत कर दिये जाने के पश्चात् भी आर्यसमाजों ने उन्हें अपने यहाँ आमंत्रित किया, उनकी कथायें करवाई और उनको सम्मान दिया। उनके वेदसंस्थान द्वारा संचालित साधना शिविरों में आर्यसमाज के चोटी के नेताओं और विद्वानों ने भाग लिया और सहयोग दिया। फिर उनके लिये आर्यसमाज की वेदी बंद कर देने का क्या अर्थ है? सार्वदेशिक सभा की नाक के नीचे ही दिल्ली की समाजें विदेहजी को बुलाती हैं और उनका प्रचार करवाती हैं। फिर अनुशासनात्मक कार्यवाही कहाँ गई? क्या सार्वदेशिक सभा इन तथ्यों से अनभिज्ञ है? यदि वह जानती है कि उसके निर्णय के उपरान्त भी उसकी आज्ञा की अवहेलना हो रही है तो ऐसा करने वाली आर्यसमाजों पर सभा ने अनुशासनात्मक कार्यवाही क्यों नहीं की? सभा निश्चयही अनुशासन का पालन करवाने में असफल रही।

स्पष्ट बात तो यह है कि आज आर्यसमाज में अनुशासन नाम की कोई वस्तु शेष ही नहीं रह गई है। और अनुशासन का पालन हो भी कैसे? समाज का संचालन ऐसे लोगों के हाथों में चला गया है जो स्वयं सिद्धान्त हीन, अवसरवादी अर्थ के दास और समाज के गौरव और परम्पराओं से अनभिज्ञ हैं। नीतिकार के शब्दों में अपूज्यों की पूजा और पूज्यों का तिरस्कार जहाँ होगा वहाँ दुर्भिक्ष, मरण और भय के अतिरिक्त और क्या फल हो सकता है? आर्यसमाज भी आज श्रेष्ठ विद्वानों और कर्मठ सभासदों के अभाव में दुर्भिक्षग्रस्त है, उसके संगठनात्मक विघटन की कल्पना भी की जा सकती है और वह अन्यान्य शक्तियों से भयाक्रान्त तो निश्चय ही है।

जब अनुशासन का पालन ही न हो तो व्यर्थ के घटाटोप से क्या लाभ? सहयोगी 'सार्वदेशिक' ने अपनी टिप्पणी में लिखा कि विदेहजी आज भी बिजली से अन्त्येष्टि कराने में विश्वास रखते हैं। फिर उन्हें आर्यसमाज में कैसे लिया जा सकता है? हमारा निवेदन है कि ऐसी छोटी छोटी बातों में मतभेद का विचार किया जाय तब तो आर्यसमाज के किन्हीं दो विद्वानों की परस्पर मेल की पटरी नहीं बैठेगी। उस परिस्थिति में सार्वदेशिक सभा किस किस विद्वान के लिये आर्यसमाज की वेदी बंद करेगी? सत्य तो यह है कि या तो कोई ऐसी कार्यवाही की हीन जाय जिससे आर्यसमाज की शक्ति का ह्रास हो और हम अपने मित्रों और शुभ चिन्तकों को अपना विरोधी बना बैठें। यदि अनुशासनात्मक कार्यवाही करनी ही पड़े तो उसका दृढ़ता से पालन किया जाय, और उसमें शिथिलता दिखाने वालों को कड़ा दण्ड दिया जाय।

आर्यसमाज ने अपने विगत जीवन काल में ऐसे अनेक विद्वानों को खोया है जिन्हें तनिक सा मतभेद हो जाने के कारण ही हमने पृथक कर दिया। माना कि इटावा वाले भीमसेन शर्मा और अखिलानन्द स्वार्थवश आर्यसमाज के विरोधी बने परन्तु क्या पं० विश्वबंधु शास्त्री जैसे त्यागी और मनस्वी विद्वानों को खोकर हमने अपनी हानि नहीं की? यह सत्य है कि सैद्धान्तिक बातों में समझौता नहीं किया जा सकता, परन्तु क्या आज भी हम ऐसे विद्वानों की प्रतिष्ठा नहीं करते और उन्हें प्रश्रय नहीं देते जिनके विचार स्पष्ट ही आर्यसमाज के सैद्धान्तिक दृष्टि कोण से

भिन्न हैं। एक ही उदाहरण देना पर्याप्त होगा। बनारस संस्कृत कालेज के भूतपूर्व प्रिन्सिपल डा० मंगल देव शास्त्री आर्यसमाजस्थ गुरुकुलों के उत्सवों पर आयोजित होने वाले सम्मेलनों के अध्यक्ष पद को सुशोभित करते रहते हैं परन्तु जिन पाठकों ने उनके द्वारा लिखी पुस्तक ' भारतीय संस्कृति का विकास: वैदिक धारा ' पढ़ी है वे जानते हैं कि वेदों के विषय में शास्त्रीजी के कैसे विचार हैं और आर्यसमाज के दृष्टिकोण से उनका कितना मतभेद है। केवल मतभेद की ही बात नहीं, डा० मंगलदेवजी के विचारानुसार तो आर्यसमाज का वेद के प्रति समग्र दृष्टिकोण ही पूर्वाग्रह युक्त, साम्प्रदायिक और रूढ़िग्रस्त हैं। ऐसे विचार रखने वाला व्यक्ति भी यदि हमारे द्वारा सम्मान का पात्र हो सकता है तो क्या विदेहजी के विषय में हम अपने निर्णय पर पुनः विचार नहीं कर सकते।

हमारे कथन का यह अभिप्राय नहीं कि सार्वदेशिक सभा विदेहजी के अपराधों के प्रति उपेक्षा दिखलाये और उनकी अहंवादिता तथा उनकी सिद्धान्त विरुद्ध मान्यताओं और क्रियाओं को क्षमा कर दे। निवेदन इतना ही है कि हम यह देखें कि हम जिस अनुशासनात्मक कार्यवाही की घोषणा करते हैं उसका सम्पूर्ण रीत्या पालन भी होता है या नहीं और किसी साधारण मतभेद की आड़ में हम किसी अच्छे व्यक्ति को केवल खो ही नहीं रहे हैं अपितु उसे अपना विरोधी तो नहीं बना रहे हैं ?

टिप्पणियाँ –

दलाई लामा की भोजन सूची –

तिब्बतीय बौद्धों के धर्म गुरू और ' जीवित बुद्ध' के प्रतिष्ठा पूर्ण पद पर आसीन दलाई लामा की भोजन सूची जब हमने समाचार पत्रों में पढ़ी, तो उससे आश्चर्य तो कुछ विशेष नहीं हुआ क्योंकि यह तो एक सर्वविदित बात है कि आज के बौद्ध धर्मावलम्बी वे चाहे स्वदेशी हों या विदेशी - घोर मांसाहारी हैं अतः यदि दलाईलामा के भोजन में मांस, मछली अन्डे और मुर्गे का समावेश हो तो आश्चर्य ही क्या ? परन्तु फिर भी हम कुछ सोचने के लिये अवश्य विवश हो जाते हैं महात्मा बुद्ध आजीवन अहिंसा, भूतदया और प्राणिमात्र के प्रति मैत्री पूर्ण व्यवहार का उपदेश देते रहे। यद्यपि बौद्ध धर्म में मांसाहार का कोई आग्रह पूर्ण निषेध नहीं है और बुद्ध के जीवनी लेखक तो स्वयं बुद्ध की मृत्यु का कारण भी उनकाशूकर मांस का भक्षण ही मानते हैं। फिर भी इतना तो निश्चय है कि अहिंसा को महत्व देने वाले व्यक्तियों का मांसाहारी होना उनकी कथनी और करनी में महद अन्तर उपस्थित करता है। यह एक सर्वविदित तथ्य है कि बुद्ध तत्कालीन वैदिक यज्ञ प्रणाली के विरोधी केवल इसलिये बने कि उन यज्ञों में प्राणियों की हिंसा होती थी। इस प्राणि हिंसा का कारण थी पुरोहित वर्ग की जिव्हा लोलुपता जिसके वशवर्ती होकर वे यज्ञों में पशुओं को मारते और अपनी रसना को तृप्त करते थे। और यह भी सत्य है कि बुद्ध ने इस रसना लोलुप पुरोहित वर्ग और उनके हिंसा रंजित कर्मकाण्ड के विरुद्ध आवाज उठाई। तो क्या यह सोचना उचित और तर्क पूर्ण नहीं होगा कि यदि बुद्ध मांस लोलुप पुरोहितों के विरुद्ध विद्रोह का झण्डा उठाते हैं तो मांस भक्षण में निश्चय ही उनकी सम्मति नहीं है। अशोक आदि राजाओं का पशु पक्षियों की रक्षा करना और उनके लिये चिकित्सालय खुलवाना इतिहास सिद्ध तथ्य है ऐसीस्थिति में बौद्धों का मांसाहार उनके प्रवर्तक और

हमारी विचारधारा:-

हमारे साप्ताहिक अधिवेशन

लेखक— श्री पं० भवानीलाल 'भारतीय' एम ए.

सामूहिक उपासना (Congregational Worship) जिस रूप में आज हमारे समाज में प्रचलित है, प्राचीन काल में भी वह उसी रूप में प्रचलित रही होगी, यह निश्चयात्मक रूप से नहीं कहा जा सकता। निश्चय ही वैदिक धर्मावलम्बी यदाकदा सम्मिलित रूप से यज्ञादि के बृहद् आयोजनों द्वारा राष्ट्र और समाज में सामूहिक चेतना का संचार करते रहते थे। उपनिषदों में राजर्षि जनक द्वारा आयोजित यज्ञों और बृहद् आध्यात्मिक समारम्भों का विस्तार पूर्वक उल्लेख मिलता है जिनमें सहस्त्रों की संख्या में तत्ववेत्ता ऋषि, महर्षि एकत्रित होकर ब्रह्म विद्या विषयक वार्तालाप करते थे। नैमिषारण्य में अठ्ठासी हजार ऋषियों द्वारा सम्मिलित रूप से पुरातन आख्यानों को सुनने की कथा भी इसी ओर संकेत करती है।

परन्तु उन्नीसवीं शताब्दी में हमारे देश ने जिस महान धार्मिक पुनरुत्थान के आन्दोलन को देखा, उसमें कुछ पाश्चात्य प्रभाव भी दृष्टिगोचर हो रहा था। आर्यसमाज का पूर्ववर्ती ब्रह्मसमाज ईसाइयत के अनुकरण पर प्रत्येक शनिवार को सांयकाल ७ से ६ बजे तक अपने साप्ताहिक अधिवेशन लगाता था जिसमें वेदपाठ, वेद व्याख्या के अतिरिक्त आध्यात्मिक प्रवचन और भजन आदि कार्यक्रम भी होते थे। आर्यसमाज के अधिवेशनों में भी यही परिपाटी अपनाई गई जो आजतक किसी न किसी प्रकार चल रही है।

आर्यसमाज के साप्ताहिक सत्संगों को विधिवत चलाने के लिये आर्य जगत की शिरोमणि सभा - सार्वदेशिक आर्य प्रतिनिधि सभा ने एक पद्धति का निर्माण किया है। आर्यसमाजों से यह आशा की जाती है कि वे इस पद्धति का पालन करें और ऐसी चेष्टा करें जिससे कि इन साप्ताहिक अधिवेशनों को अधिकाधिक लोकप्रिय, रोचक और उपयोगी बनाया जा सके। परन्तु बहुधा यह देखा गया है कि इन सत्संगों का जितना लाभ आर्यसमाज को मिलना चाहिये उतना मिल नहीं पाता। अधिकांश में यह कार्यक्रम एक रूढ़िबद्ध प्रणाली पर चलता रहता है।

साधारणत: आर्यसमाजों के साप्ताहिक अधिवेशनों में सामूहिक संध्या, हवन, भजन, कथा, प्रवचन और समाचार सूचनायें आदि के कार्यक्रम रहते हैं। अधिवेशन का कोई समय नियत नहीं रहता। कहीं कार्यक्रम विलम्ब से प्रारम्भ होता है, और कहीं जल्दी कई समाजों में रविवार की सायंकाल को अधिवेशन लगते देखे गये हैं। साप्ताहिक अधिवेशनों में सामूहिक संध्या और हवन प्राय: उपेक्षित से रहते हैं। साधारणत: यह समझा जाता है कि अधिवेशन के आरम्भ में किये जाने वाले यज्ञ का जिम्मा समाज के मंत्री व कुछ यज्ञ प्रेमी, कर्मकाण्डी महानुभावों का है जो सत्संग में ठीक समय पर उपस्थित हो जाते हैं। अन्य सदस्य तो अपनी वैयक्तिक रुचि और सुविधा के अनुसार आते हैं। आर्यसमाजों के अधिवेशनों में किये जाने वाले यज्ञों की प्रणाली में सर्वत्र एकता का अभाव दृष्टिगोचर होता है। हम आर्यसमाज के कर्मकाण्ड में प्रचलित असंगतियों और असमानताओं पर अपनी

विचारधारा के अन्तर्गत अन्य किसी अंक में प्रकाश डालेगे, परन्तु यहां इतना लिख देना ही पर्याप्त है कि साप्ताहिक सत्संगों में किये जाने वाले यज्ञों की विधि को एक सूत्र में पिरोकर उसे सर्वत्र समान भाव से प्रचलित करने के निश्चित आदेश देना सार्वदेशिक धर्मार्य सभा का प्रमुख कर्तव्य हो जाता है।

यज्ञ के पश्चात् कुछ सामूहिक भजन बोलने की परिपाटी है। संगीत मानव हृदय को आकृष्ट करने का एक प्रमुख साधन है, परन्तु खेद है कि आर्य-समाज ने संगीत की ओर बहुत कम ध्यान दिया। तभी तो अक्सर यह फब्ती सुनने में आती है कि आर्य-समाजी भजनीकों ने संगीत की हत्या कर दी है। साप्ताहिक अधिवेशन में यद्यपि ईश्वर भक्ति के ही भजन बोलने चाहिये, परन्तु कौनसा ऐसा विषय शेष रह जाता है जिस पर आर्यसमाजी गायक अपने उद्गार प्रकट नहीं करते। भजनों के पश्चात कथा और प्रवचन की बारी आती है। अकसर ऋषि दयानन्द कृत सत्यार्थ प्रकाश तथा अन्यान्य वैदिक, आर्ष ग्रन्थों को कथा करने के लिये चुना जाता है, परन्तु जिस व्यक्ति पर कथा का भार होता है वह प्रायः अपने विषय का पंडित नहीं होता और न विषय की तैयारी करने का कष्ट ही उठाता है। परिणाम यह होता है कि वह कथा के प्रति श्रोताओं की रुचि उत्पन्न करने में असफल हो जाता है।

कथा के पश्चात् उपदेश और प्रवचन होने चाहिये। साधारणतः प्रति सप्ताह कोई उच्च कोटि का विद्वान आकर किसी समाज में प्रवचन करे, यह तो सम्भव नहीं, ऐसी स्थिति में प्रवचन का भार समाज के किसी स्वाध्याय शील सदस्य के जिम्मे पड़ता है। होना तो यह चाहिये कि उपदेश और प्रवचन करने वाला सभासद अपने विषय की पूरी तैयारी करे और अपने वक्तव्य को अधिक से अधिक सरल, रोचक, और बोधगम्य बनाने की चेष्टा करे। परन्तु देखा यह गया है कि आज आर्यसमाजों के अधिवेशनों में उपदेश और प्रवचन के नाम पर जो कुछ वाहियात, उट पटांग बातें कही जाती हैं उन्हे सुनकर कोई भी नया व्यक्ति आर्यसमाज की ओर आकृष्ट होना तो दूर रहा, जो रहे सहे व्यक्ति होते हैं वे भी धीरे धीरे सत्संगों में आना कम कर देते हैं।

यह है साप्ताहिक अधिवेशनों का वास्तविक स्वरूप। आर्यसमाज जिस रूढ़िवादिता के विरुद्ध आरम्भ से आन्दोलन करता रहा, आज वह स्वयं भी रुढ़िवाद का शिकार हो रहा है। ऐसी स्थिति में हम क्या करें? हमारे विचार से साप्ताहिक सत्संगों के सुधार और परिष्कार के लिये निम्न बातों पर ध्यान दिया जाना अत्यावश्यक है —

[१] सत्संग का समय निश्चित रहे। इसके लिये सार्वदेशिक सभा ग्रीष्म और शीत ऋतु के दिन मान को लक्ष्य में रखकर वर्ष भर के लिये दो समय विभाग नियत करे, जिनका प्रत्येक समाज दृढ़ता से पालन करे।

[२] यज्ञारम्भ से पूर्व सामूहिक संध्या हो, जिसमें समस्त सदस्य अनिवार्य रूप से उपस्थित रहें यज्ञ का भार मन्त्री और दो चार अन्य लोगों पर ही नहीं छोड दिया जाय। यह भी हो सकता है कि मन्त्री प्रति सप्ताह के लिये चार सभासदों को सपत्नीक यज्ञ में बैठने के लिये आहूत करे। इसका यह लाभ होगा कि समाज का प्रत्येक सदस्य यज्ञ विधि सीख जायेगा। समाज का पुरोहित या कोई अन्य स्वाध्यायशील विद्वान यज्ञ का ब्रह्मा माना जाय और उसकी आज्ञा का कठोरता

से पालन किया जाय। यज्ञ की सामग्री और अन्य उपकरणों तथा यज्ञ वेदी की स्वच्छता का भार सेवक को सौंपकर निश्चिन्त हो जाना मंत्री के अनुत्तरदायित्व का सूचक है।

[३] यज्ञ के पश्चात् ईश्वर भक्ति के एक या दो भजन हों। ऐसे भजन सामूहिक रूप से भी गाये जा सकते हैं। अमीचन्द, नारायण प्रसाद बेताब, वासुदेव, नाथूराम शंकर, प्रकाशचन्द्र कविरत्न आदि के भजन उच्च कोटि के हैं जिनका सामान्यतया उपयोग किया जाना चाहिये। सामूहिक रूप से गाये जाने वाले भजनों के अतिरिक्त जो भजन गाये जाँय उनके लिये वाद्यों का प्रयोग किया जा सकता है। परन्तु यह ध्यान रक्खा जाय कि संगीत के माधुर्य व स्वारस्य की कहीं भी हत्या न हो। सत्संगों में खण्डनात्मक और राजनैतिक विवादपूर्ण पद्यों के लिये कोई स्थान नहीं होना चाहिये।

[४] जिस पुस्तक की कथा की जाय, उसका प्रसंग पूर्व से ही श्रोताओं को ज्ञात होना चाहिये। कथा करने वाला अपने विषय की पूरी तैयारी सप्ताह भर करे। कथा के समय हर सदस्य के पास उस ग्रन्थ की एक एक प्रति का होना अधिक लाभप्रद हो सकता है। जिस प्रकार गिरजे की ओर प्रयाण करते समय एक ईसाई बाइबिल लेना नहीं भूलता, इसी प्रकार कोई आर्य सत्यार्थप्रकाश के बिना समाज मन्दिर में क्यों प्रवेश करे?

[५] यथा सम्भव वेद मन्त्रों के आधार पर ही प्रवचन और उपदेश हों। उपदेशों में विषयान्तर करना, अनावश्यक दृष्टान्त देने लगना अथवा सामयिक राजनैतिक आन्दोलनों की अनावश्यक चर्चा और आलोचना करने लगना उपदेश के महत्व को नष्ट कर देता है। आर्यसमाज की वेदी की पवित्रता की रक्षा करना प्रत्येक आर्य सभासद का कर्तव्य है। आर्यसमाजों के साप्ताहिक अधिवेशनों को व्यर्थ के वादविवाद और पार्टी के अखाड़े बनने से बचाना आवश्यक है।

[६] अधिवेशन में सम्मिलित होने वाले प्रत्येक आर्य सभासद की उपस्थिति को अंकित करने के लिये एक रजिस्टर रहना चाहिये।

[७] समाज के अधिकारी साप्ताहिक अधिवेशन की सफलता के लिये विशेष प्रयत्नशील हों। वे सभासदों को सपरिवार सम्मिलित होने के लिये प्रेरित करें और स्वयं उसके लिये उदाहरण स्वरूप बनें।

[८] आर्यसमाज उपासना मन्दिर हैं। अतः उनकी पवित्रता और मर्यादा की रक्षा करना आवश्यक है। जिन समाजों में कन्या पाठशालायें तथा अन्य शिक्षण संस्थायें चलती हैं, उनमें मन्दिरों की पवित्रता और भव्यता नहीं रहती। फलस्वरूप वहाँ का वातावरण आध्यात्मिक भावों के उद्रेक करने में असफल रह जाता है। यही कारण है कि आर्यसमाज शुष्क, नीरस, तर्कवादियों के संगठन के रूप में कुख्यात हो रहा है। उसमें भक्ति और उपासना के दिव्य भावों का अभाव हो गया है।

क्या हम यह आशा करें कि आर्यसमाजों के अधिकारी गण इस ओर ध्यान देकर अपने साप्ताहिक सत्संगों को यथार्थ में उपयोगी बना सकेंगे?

शेष पृष्ठ ३७ का

पूर्व पुरुषाओं से कोई बहुत अधिक श्लाघनीय वस्तु नहीं है और वैदिक यज्ञों का उनके द्वारा यह कह कर विरोध किया जाना कि वे लोगों की मांस लोलुप प्रवृत्ति के कारण उद्भूत हैं वैसा ही है जैसा स्वयं शीशे के मकान में बैठ कर दूसरों पर पत्थर फेंकना।

स्वाध्याय का पृष्ठ -

सनत्कुमार का नारद के प्रति उपदेश

(ले० श्री भवानी लाल 'भारतीय' एम० ए०)

उपदेश की इच्छा से महर्षि नारद भगवान् सनत्कुमार के समीप गये और बोले, " भगवान् मुझे उपदेश प्रदान करें। " सनत्कुमार ने उनकी पात्रता जानने के लिये उनसे पूछा - तुम जो कुछ जानते हो, वह मुझे बतलाओ, ताकि मैं उसके आगे की बात बता सकूं। उत्तर में महर्षि नारद ने जिन विद्याओं के नाम बताये, उनकी लम्बी सूची यह सिद्ध करने के लिये पर्याप्त है कि प्राचीन उपनिषद् कालीन ऋषियों का ज्ञान कितना विस्तृत था। विभिन्न प्रकार की भौतिक और आध्यात्मिक विद्याओं को आत्मसात् कर लेने के पश्चात् भी उनकी ज्ञान पिपासा चरम तत्व का साक्षात्कार न कर लेने तक शान्त नहीं होती थी।

नारद ने कहा, महाराज मैं चारों वेदों के अतिरिक्त इतिहास, पुराण, व्याकरण, श्राद्ध कल्प, गणित, खगोल उत्पात ज्ञान, तर्क शास्त्र, नीति शास्त्र निरुक्त, ब्रह्म विद्या अर्थात् वेदांग ज्ञान, भूत-विद्या, क्षत्र विद्या, धनुर्वेद, नक्षत्र विद्या, ज्योतिष् सर्प विद्या, और नृत्य, गान, वाद्य और शिल्पादि विज्ञान जानता हूँ। ज्ञान राशि के बृहद् कोशों के सदृश इन विभिन्न विद्याओं के जानने के उपरान्त भी नारद को सन्तोष नहीं है। उसने कहा, " भगवन् मैं केवल मंत्र वेत्ता ही हूँ। आत्म वेत्ता नहीं। मैं ने आप जैसों से सुना है कि आत्म वेत्ता शोक के पार कर लेता है। अत: मैं आपसे उस उपाय को जानना चाहता हूँ जिससे मनुष्य शोक सागर से पार हो जाय।

नारद की बहुज्ञता को जानते हुये भी सनत्कुमार समझ गये कि ये सब शास्त्र अपरा विद्या के ही अन्तर्गत आते हैं। परा विद्या वह है जिससे अक्षर, ब्रह्म का ज्ञान होता है। अब तक नारद ने केवल नाम को ही जाना है। नाम को जानने का तात्पर्य है केवल पुस्तकीय ज्ञान शाब्दिक-ज्ञान। यहाँ से ही सनत्कुमार का उपदेश प्रारम्भ हो जाता है। नाम से आगे जो क्रम चलता है उसमें वाक्, मन, संकल्प, चित्त, ध्यान, विज्ञान, बल, अन्न, जल, तेज, आकाश, स्मरण, आशा, प्राण, चौदह तत्व आते हैं। इस प्रकार प्राण के आधार भूत आत्म तत्व की प्रतीति कराने के पश्चात् सनत्कुमार ने सत्य, विज्ञान, मति श्रद्धा, निष्ठा, कृति और सुख को जानने योग्य बताया। यह शाश्वत सुख भूमा रूप परमात्मा में स्थित है

" यो वै भूमा तत्सुखं नाल्पे सुखमस्ति भूमैव सुखं भूमा त्वेव विजिज्ञासितव्य इति "

निश्चय जो भूमा है वही सुख है, अल्प में सुख नहीं है। भूमा ही सुख है। भूमा की ही जिज्ञासा करनी चाहिये।

उस भूमा रूप परमात्मा को जानने के पश्चात् कुछ भी जानना शेष नहीं रह जाता। भूमा अमृत है और जो अल्प है वह मर्त्य है। नारद ने पूछा; " भगवन् यह भूमा किसमें प्रतिष्ठित है? " सनत्कुमार बोले, " परमात्मा स्व महिमा में ही प्रतिष्ठित है।

शेष पृष्ठ ३४ पर

ईश्वर : एक दार्शनिक विवेचन

[ले० श्री पन्ना लाल परिहार बी० ए० एल० एल० बी०, जोधपुर]

विश्व में एक सर्व नियन्ता गूढ़ और व्यापक सच्चिदानन्द सत्ता है। परन्तु सूक्ष्म होने पर दिखती नहीं। फिर भी इससे इनकार नहीं किया जा सकता। ॥ वेद का उपदेश है—

वेदाहमेतं पुरुषं महान्तमादित्य वर्णं तमसः परस्तात्। तमेव विदित्वा अतिमृत्युमेति नान्यः पंथा विद्यते अयनाय ॥

अर्थात् विश्व में व्यापक पुरुष विशेष महान शक्ति को मैं जानता हूँ जो दिव्य प्रकाश रूप और अन्धकार प्रकृति से परे सूक्ष्म है। उसी परम पुरुष को जान कर प्राणी मृत्यु या जन्म मरण के बन्धन से पार हो जाता है। मुक्ति का मार्ग इसके सिवाय कोई नही है।

क्या यह सत्ता सिद्ध या प्रमाणित हो सकती है? सांख्य दर्शन ने लिखा है कि ईश्वरा सिद्धेः। ईश्वर सिद्ध नहीं हो सकता। इस वाक्य से कई लोग सांख्य को अनीश्वरवादी या नास्तिक बताते है। परन्तु यह भ्रम है। कपिल का अभिप्राय यह है कि साधारण प्रमाण और साधनों से ईश्वर असिद्ध है। क्योकि परमेश्वर आत्म ज्ञान का विषय है। यह योग द्वारा जाना जाता है। साधारणतया वस्तु की सिद्धि लक्षण और प्रमाण से होती हैं। प्रमाण तो एक वृत्ति है। वृत्ति मन का व्यापार है। मन व बुद्धि से परे सूक्ष्म सत्ता है परमात्मा। अतः बुद्धि की पकड़ और पहुँच से परे है भगवान। पतंजलि ने ईश्वर का लक्षण दिया है- जो क्लेश, कर्म विपाक (कर्म फल) और आशय (हृदय या मन चतुष्टय) से सूक्ष्म, अछूता पुरुष विशेष है, वह ईश्वर है। इस प्रकार परमेश्वर इन्द्रियों से परे और मन और बुद्धि से सूक्ष्म है। परमात्मा आत्मा के अनुभव का विषय है अनुमान और शब्द प्रमाण से हम अपने को पिता का पुत्र मानते है। देखा किसने।

परमात्मा के प्रमाण में प्रत्यक्ष, उपमान और शब्द प्रमाण भी सन्तोषप्रद नहीं होते। अनुमान में प्रमाण से काम लिया जाता है। लिंग या लक्षण के ज्ञान से लिंगी का ज्ञान करना अनुमान है। जहां पर धूंआ है वहां अग्नि है। अनुमान तीन प्रकार का होता है। पूर्ववत अर्थात् कारण से कार्य जानना। शेषवत अर्थात् कार्य से कारण जानना और सामान्य शेषवत अनुमान से परमात्मा को जानो। सृष्टि है तो सृष्टा भी है।

अनुमान के अन्तर्गत चार प्रकार की युक्तियां दी जाती हैं। (१) एक सृष्टि रचना सम्बन्धी [cos mological]

(२) कारण और उद्देश्य सम्बन्धी (teleological)

(३) कर्म, फल, पाप पुण्य सम्बन्धी (moral)

[४] अस्तित्व और आधार अधेय सम्बन्धी (ontologieal)

कारण और कार्य का नियम सर्वत्र काम कर रहा है। सृष्टि में चेतनता भी है। उसका उद्देश्य है जो चेतन सत्ता का पता देता है। बिना चेतन के ज्ञान आया कहां से। ज्ञान का आदि स्त्रोत है जहां से विकास होता है। कर्मवाद में पाप पुण्य के फल दुख सुख मिलते हैं। पाप करके भी कोई दुख नहीं चाहता। न्याय नियम से यथावट फलदाता कोई है। कर्म जड़ है और चेतन के आश्रित है। कर्म जड़

स्वयं फल नहीं दे सकता। विश्व का आधार भी कोई है। निराधार कोई वस्तु ठहर नहीं सकती। ज्ञान का क्रमशः विकास केवल अनुभव के आधार पर होना संभव नहीं। सृष्टि से पूर्व ज्ञान का दाता होना चाहिये।

अनुमान की युक्ति बुद्धिवाद का विषय है। इससे किसी हद तक सन्तोष होता है। प्रथम आत्मा को जानो। आत्मा की अमरता स्वयं सिद्ध है। मैं सोचता हूँ। इसलिये कोई विचारक भी विद्यमान अवश्य है। अभाव से भाव नहीं बनता। इसलिये मेरा अस्तित्व जो वर्तमान में है वह पहले भी था और भविष्य में भी रहेगा। यह है आत्मा का अस्तित्व और अमरपन। कोई व्यक्ति अपने अस्तित्व से इनकार नहीं कर सकता। अब इसी युक्ति को आगे बढ़ाओ। शरीर में जैसे आत्मा है, वैसे ही विश्वात्मा होना चाहिये।

विश्व में प्रत्येक विज्ञान विभाग में असंख्य अटल नियम कार्य कर रहे हैं। सूर्य का उदय और अस्त होना, तारों की गति, ऋतु परिवर्तन आदि में कहीं त्रुटि नहीं है। नियमों के पीछे एक योजना है, उद्देश्य है जो छुपा हुआ है। योजना बिना चेतन और ज्ञान सत्ता के संभव नहीं। जड़ पदार्थों में योजना बनाने की शक्ति नहीं है। जड़ में चेतनता और ज्ञान कहां से आया। दो पदार्थों के मेल का परिणाम चेतन ज्ञान नहीं हो सकता यदि ऐसा मानो तो जिन पदार्थों से कोई वस्तु बनी है, उनमें भी गुप्त रूप से चेतनता विद्यमान थी। अन्यथा अभाव से भाव कैसे हो गया।

विश्व में सर्वत्र अटल नियमों का जाल बिछा हुआ है। विज्ञान के प्रत्येक विभाग में नियम काम कर रहे हैं। कार्य का कारण अवश्य होता है। प्रत्येक वस्तु में गति हो रही है। गति का स्रोत अवश्य है। नियम है तो नियामक भी है। सृष्टि एक महान प्रबन्ध है। प्रबन्धक भी है। इस मिल्कियत का मालिक भी है। लावारिस नहीं है। संसार के पदार्थ अवयव से बने हैं। बनाने वाला भी है। अवयव स्वयं नहीं जुड़ जाते। उपादान कारण (Material cause) के साथ निमित्त कारण (Efficient cause) भी हैं। घड़ा है तो मिट्टी भी है और कुम्हार भी। स्वभाव से ही कोई वस्तु बनती नहीं। स्वभाव का अर्थ है स्वस्य भाव (Inherent Quality) जो किसी पदार्थ में सदा रहता है। यदि सृष्टि का स्वभाव बनने का है तो बनती ही चली जायगी। बिगड़ेगी नहीं। यदि सृष्टि का स्वभाव बिगड़ने का मानो तो वह बिगड़ती ही चली जायगी। और यदि इसका स्वभाव बनना और बिगड़ना दोनों है तो क्षण क्षण में वह बनती बिगड़ती रहेगी। उसमें स्थिरता नहीं हो सकती। यदि यह मानो कि नियत समय पर ऐसा होना स्वभाव है तो यह ज्ञानपूर्वक योजना का फल है जो पदार्थ में नहीं। अतः स्वभाववाद ठीक नहीं है।

तब प्रश्न उठता है कि क्या सृष्टि अकस्मात (Chance) से बन गई है। ऐसा भी संभव नहीं। वर्णमाला के अक्षरों को वर्षों तक उछालते रहो। फिर भी कोई शब्द स्वतः नहीं बनते न पुस्तक रची जा सकती। चेतन और ज्ञान पूर्वक सत्ता अक्षरों को लिखकर ग्रन्थ रचती है सृष्टि के परमाणु भी किसी चेतन ज्ञानी सत्ता के आधार से कार्य कर रही है जड़ परमाणुओं में चेतनता और ज्ञान कहां हैं।

यह विश्व मानों एक जीवित माता का उदर है। यदि माता मर जावे तो उदरस्थ बच्चा कैसे जीता रह सकता है

लोग कहते हैं कि घड़ी तो है परन्तु घड़ी साज नजर नहीं आता। इसलिये घड़ी का बनाने वाला नहीं है। हलुआ सामने है। उसमें घी, शक्कर, मैदा, पानी सब है। परन्तु मिलाने वाला हलवाई कहां है, उसे हलवे में दिखाओ। अनुमान लगाने का कहने हैं तो वे प्रत्यक्ष प्रमाण का आग्रह करते हैं। आत्मा का अनुभव और अभ्यास का कहने हैं तो वे इस पचड़े में नहीं पड़ते। वे कहते हैं कि जैसे नदी का बनाने वाला कोई नहीं है तो सूर्य का बनाने वाला कैसे माने? यह युक्ति उनकी भ्रमात्मक है। सिद्ध कोटि से चल कर साध्य कोटि की वस्तु सिद्ध की जाती है। नदी और सूर्य दोनों ही साध्य कोटि में हैं। सही? उदाहरण यह है कि जैसे ताजमहल का बनाने वाला था तो कमल जो सृष्टि है उसका स्रष्टा भी है।

क्या आत्मा और ईश्वर प्रत्यक्ष हो सकता है। उत्तर है योग साधन द्वारा आत्मा से परमात्मा को जानो। इसका अष्टांग योग का क्रम निर्धारित है। अभ्यास और वैराग्य से आगे बढ़ो तो परमात्मा का प्रत्यक्ष या साक्षात्कार होगा। अन्त: करण (हृदय) की गांठ खोलो। चित्त की स्थिरता करो। वृत्तियों का निरोध करो तो आत्मा का प्रकाश अनुभव होगा। अन्यथा चित्त वृत्तियों की समानता ही सृष्टि का स्वरूप है।

ईश्वर का कर्ता कोई नहीं। कर्ता का कर्ता नही होता। ईश्वर चल और अचल दोनों है। चुम्बक अचल है परन्तु लोहे को चलाता है ईश्वर अशरीरी है फिर भी अपने स्वभाविक ज्ञान बल से सृष्टा है। माता अपने उदर में बच्चे के हाथ पैर नहीं बनाती। वे स्वयं बनते हैं नियम से। ईश्वर सृष्टि का रचयिता है. निमित्त कारण है। वह उपादान नहीं है, उपादान कारण नहीं है। प्रकृति उपादन कारण है। जीव सान्त है फिर भी योग और आत्म दर्शन द्वारा अनन्त परमेश्वर की थाह ? ले सकता है। माता पिता ने हमें नहीं बनाया। वे तो पार्थिव शरीर के निमित्त कारण हैं। सृष्टि में जो अटल नियम काम कर रहे हैं उनमें कोई त्रुटि नहीं है, अपवाद नही है। अपवाद और त्रुटि का भान हमारी एकांगी सीमित ज्ञान की दृष्टि है। सर्वज्ञ की दृष्टि में सब कुछ ठीक है। यदि कोई ईश्वर को नहीं मानता है तो इससे भगवान पर कोई असर नहीं। वह व्यक्तिगत हानि उठाता है। परमात्मा सर्व गुणों की खान और दिव्यप्रकाश पुंज है। यदि कोई सर्वोत्तमसत्ता का आश्रय नहीं लेता, गुणों को धारण नहीं करता और प्रकाश से दूर रहना चाहता है तो यह उसी की हानि है। उपासना करना अपनी ही भलाई करना है इसमें हमारा ही स्वार्थ है। यह परमेश्वर की प्रशंसा या खुशामद नहीं है। भगवान किसी से खुश और नाराज नही होता।

प्रश्न उठता है कि ईश्वर को क्यो माने? उत्तर है कि आनन्द प्राप्ति के लिये परमात्मा की उपासना करो। सत चित से सच्चिदानन्द बनो। प्रभु के सम्पर्क से आनन्द होगा और सुख दुख का द्वन्द्व मिटेगा और जन्म मरण के चक्र से छूट जावोगे। उपासना से शुभ कर्म में प्रवृत्ति होती है। ईश्वर के न्याय नियम के भय के कारण पृथा

अभिमान दूर रहते हैं। जीवन में एक उच्च आदर्श भी होना चाहिये। परमात्मा हमारा आदर्श है, ध्येय है, उसकी प्राप्ति ही मोक्ष है, परमानन्द है, उपासना से चित्त शुद्धि होती है। आत्मिक बल बढ़ता है। हममें नम्रता और उत्साह आते हैं। विश्व में हमारे सुख साधन जिसने जुटाये हैं, उसके प्रति कृतज्ञता प्रकाश करना भी उपासना है। जो प्रभु भक्त है, वह जनता को भी प्रेम करता है।

केवल कर्तव्य पालन से जीवन अधूरा है। यह एक पहिये की गाड़ी होगी। कर्म के साथ ब्रह्म ज्ञान भी जरूरी है। विद्या और अविद्या दोनों को साथ साथ जानो। केवल कर्म करना बिना उद्देश्य की यात्रा है।

प्रश्न है कि यदि कर्तव्य कर्म ही करते रहें तो ईश्वर विश्वास और उपासना की क्या आवश्यकता है। निष्काम कर्म द्वारा ही हमें मोक्ष मिल जायगा। उत्तर है कि अविद्या (कर्म) और विद्या दोनों को साथ साथ जानो। अविद्या से मृत्यु (दुख) से तर जावोगे। परन्तु विद्या [ब्रह्म ज्ञान] द्वारा अमृत [मोक्ष] का भोग करोगे। (यजु- ४०) ज्ञान के बिना मुक्ति नहीं होती। ज्ञान ही मुक्ति है। वही मुक्ति का स्वरूप है। हृदय ग्रन्थि के विच्छेद होने पर कर्म का क्षय होता है। कर्म हम अपने अन्त: करण के अनुसार करते है। परन्तु जीव अल्पज्ञ और सान्त है। वह भूल कर सकता है। उससे सत्य मार्ग और उद्देश्य प्रदर्शक उच्च शक्ति का सहारा लेना जरूरी है। उपासना मानो हमारे अन्त: करण का साबुन है। इससे चित्त शुद्धि होती रहती है और दिव्य प्रकाश मिलता रहता है। केवल कर्म करना एकांगी यात्रा है। वह बिना लक्ष्य का काम है। कर्म तो साधन है। ज्ञान साध्य है।

बिना साध्य (लक्ष्य) के केवल साधन (कर्तव्य कर्म) से मानो अंधेरे में टटोलना है। यात्री को भटकने जाने की संभावना है।

कर्म से तो दुख से छुटकारा होता है। वह स्वर्ग का मार्ग है। परन्तु मुक्ति का मार्ग तो ज्ञान है जो उपासना से आता है। केवल कर्म क्षेत्र में विचरने से मिथ्याभिमान होता है जिससे अत्याचार, अनाचार की संभावना है क्योंकि मनुष्य अपने से अन्य उच्च सत्ता को मानता ही नहीं उच्च सत्ता परमेश्वर को मानने और उसकी उपासना से कर्म में उत्साह होता है। गीता में भी कर्म योग को सरल साधन माना है परन्तु सांख्य योग को श्रेष्ठ बताया है। सर्वज्ञ, सर्व शक्ति से सम्पर्क से अल्पज्ञ आत्मा को दीप्त करते रहो। यही भक्ति है। इसमें ईश्वर का कोई स्वार्थ नही। हमारी ही भलाई है। निष्काम कर्म से तो संचित कर्मों का क्षय होता और नवीन कर्म नहीं जुड़ते। यह मार्ग नकारात्मक है। आनन्द मिलना तो ब्रह्म ज्ञान द्वारा ही होता है। कर्म तो यज्ञ रूप है जिससे स्वर्ग सुख मिलता है। मोक्ष तो ज्ञान से मिलेगा। कर्म से मनोवृत्ति होती है। इस वृति के निरोध बिना आत्म दर्शन का आनन्द नहीं हो सकता। जिस प्रभु ने हमें सब कुछ दिया है उसके लिये कृतज्ञता प्रकाश करना भी उपासना है। यह हमारा धर्म है यद्यपि इससे परमात्मा की प्रशंसा का प्रश्न नहीं है। अत: यजु० ४० में कहा है—

विद्यां च अविद्यां च यस्तद् वेदो भयं सह।
अविद्यया मृत्युं तीर्त्वा विद्यया मृतं मश्नुते।

शेष पृ० ४८ पर देखिये

सैद्धान्तिक चर्चा—

" सत्यार्थ प्रकाश भाष्य--चतुर्थ समुल्लास "

लेखक —[वैदिक गवेषक श्री पं० शिवपूजन सिंह कुशवाहा ' पथिक ' बी० ए० सिद्धान्तवाचस्पति ।]

गतांक से आगे

"सोलहवें वर्ष से ले के चौबीसवें वर्ष तक कन्या और पच्चीसवें वर्ष से ले के अड़तीसवें वर्ष तक पुरुष का विवाह समय उत्तम है ।"

भाष्यः--मानव जीवन को सुखमय बनाने के लिये हमारे ऋषियों ने सोलह संस्कार निर्माण किये हैं। इनमें विवाह संस्कार अत्यन्त विचारणीय संस्कार है। विवाह के मुख्यतः दो उद्देश्य माने जाते है — [१] दाम्पत्य प्रेम , [२] सन्तानोत्पत्ति। इन दोनों में प्रथम ही मुख्य है। यह दाम्पत्य प्रेम जो विवाह का सर्वोच्च उद्देश्य और गार्हस्थ्य जीवन का सर्वस्व है स्त्री - पुरुषों में कब उत्पन्न होता है ? आइये पाठक—वृन्द हम पर विचार करें ।

बड़े बड़े मनीषियों के विचार हैं कि वैदिक काल में कन्याओं के विवाह प्रौढ़ावस्था में होते थे जिससे सहज ही दाम्पत्य प्रेम उत्पन्न होता था। जब से समाज में बाल विवाह रूपी कोढ़ ने प्रवेश किया है तबसे समाज का अधःपतन हो रहा है और गार्हस्थ्य जीवन नारकीय दृश्य हो रहा है। अब भी यदि कन्याओं का विवाह प्रौढ़ावस्था में हो तो गार्हस्थ्य जीवन सुख—मय हो जायेगा।

अब-प्रौढ़ावस्था के विवाह का प्रमाण वेद , गृह्य—सूत्र तथा विद्वानों के विचारों से प्रदर्शित किया जाता है !

आर्षप्रमाण — " ब्रह्मचर्येण कन्या३युवानं विन्दते पतिम् " [अथर्व० कां० ११ सू० ५ , मं० १८]

महर्षि दयानन्दजी भाष्य — " जैसे लड़के ब्रह्म—चर्य सेवन से पूर्ण विद्या और सुशिक्षा को प्राप्त होके युवती , विदुषी , अपने अनुकूल प्रिय सदृश स्त्रियों के साथ विवाह करते हैं वैसे [कन्या] कुमारी [ब्रह्म—चर्येण] ब्रह्मचर्य सेवन से वेदादि शास्त्रों को पढ़ पूर्ण विद्या और उत्तम शिक्षा को प्राप्त युवती होके पूर्ण युवावस्था में अपने सदृश प्रिय विद्वान (युवानम्) पूर्ण युवावस्था युक्त पुरुष को (विन्दते) प्राप्त होवे। इसलिये स्त्रियों को भी ब्रह्मचर्य और विद्या का ग्रहण अवश्य करना चाहिये। " ३

चतुर्वेदभाष्यकार पं० जयदेव शर्मा विद्यालङ्कार , मीमांसातीर्थ — ' (ब्रह्मचर्येण) ब्रह्मचर्य के पालन से (कन्या) कन्या (युवानं पतिम् विन्दते) युवापति को प्राप्त करती है। " ४

सिद्धान्त-मर्मज्ञ, विद्याभूषण पं० सुरेन्द्र शर्मा गौड़ वेद-काव्यतीर्थ , साहित्योपाध्याय — "ब्रह्मचर्यपूर्वक युवती कन्या ब्रह्मचारी युवा पुरुष को पति चुने। " ५

कतिपय पौराणिक पण्डित इस मंत्र के " ब्रह्म—चर्येण " पद को 'युवानं' के साथ जोड़ते हुये यह अर्थ करने का प्रयास करते हैं कि " कन्या ब्रह्मचर्य

३. सत्यार्थ प्रकाश, तृतीय समुल्लास ।

४. अथर्ववेद,संहिता भाषाभाष्य , द्वितीयावृत्ति , पृष्ठ २३२-२३३

५. साप्ताहिक 'आर्य-मित्र' वर्ष ४१, सितम्बर १ , सन् १९३८ ई० ।

युवक पति को प्राप्त करती है। कन्या का अर्थ भी ये "दश वर्षा भवेत् गौरी..." आदि कल्पित श्लोकों के आधार पर १० वर्ष की बालिका करते हैं फिर उसके लिए वेदाध्ययन की आज्ञा ही कैसे हो सकती है।

किन्तु श्री सायणाचार्य जी के भाष्य (जिसे सभी पौराणिक पण्डित मानते हैं) से इन कल्पित अर्थों की निवृत्ति स्वयं हो जाती है।

श्री सायणभाष्य — "अत्रापि ब्रह्मचर्यं प्रशस्यते (कन्या) अकृत विवाहा स्त्री ब्रह्मचर्यं चरन्ती तेन ब्रह्मचर्येण (युवानम्) युवत्व गुणोपेतम् उत्कृष्टं [पतिम्] [विन्दते] लभते।"

अर्थात् — "यहाँ ब्रह्मचर्य की प्रशंसा है। कन्या ब्रह्मचर्य का अनुष्ठान करती हुई उसके द्वारा युवक उत्तम पति को प्राप्त करती है।"

यहाँ पर श्री सायण ने कन्या का अर्थ १० वर्ष की बालिका न करते हुए 'अविवाहा स्त्री' ऐसा किया है और 'ब्रह्मचर्य चरन्ति' इन शब्दों को लिखते हुए उस अनर्थ का परिहार कर दिया है जो 'ब्रह्मचर्येण' को 'युवानम्' के साथ जोड़ने का व्यर्थ और अप्रासंगिक यत्न किया जाता है।

ऋग्वेद ३।३३।१० के भाष्य में श्री सायण ने 'कन्या' का अर्थ 'युवतीः' ऐसा किया है। ऋग्वेद १०।६७।१० के भाष्य में भी "अभिनव यौवना" यह 'कन्या' का अर्थ किया है। "विन्दते" पद का अर्थ श्री कुल्लूक भट्ट ने मनुस्मृति ९।९० की टीका में 'स्वयं वृणीत' अर्थात् स्वयं चुनाव करे, यह किया है।

यहाँ जिस 'ब्रह्मचर्य' शब्द का प्रयोग है उसकी व्याख्या श्री सायणाचार्य ने इसी सूक्त, अध्याय ११।७ के अनेक मंत्रों में इस प्रकार की है "ब्रह्मचर्येण तपसा राजा राष्ट्रं विरक्षति"।

अध्याय ११।७।१७ की व्याख्या में वे लिखते हैं :—

"ब्रह्मचर्येण— ब्रह्म वेदः तदध्ययनार्थमाचर्यम् आचरणीयं समिदाधान भैक्ष्यचर्योर्ध्वरेतस्त्वादिकं ब्रह्मचारिभिरनुष्ठीयमानं कर्म ब्रह्मचर्यम् तेन"।

अर्थात् — ब्रह्म का अर्थ वेद है उसके अध्ययन के लिये जो भी ब्रह्मचारियों द्वारा किये जाते हैं वे ब्रह्मचर्य शब्द में आते हैं।

इस सूक्त के प्रथम ही मंत्र में जो ब्रह्मचारी शब्द आया है उसकी व्याख्या में श्री सायणाचार्य लिखते हैं :- "ब्रह्मणि-वेदात्मके अध्येतव्ये चरितुं शीलमस्य स तथोक्तः"।

अर्थात्— ब्रह्मचारी वह है जो वेद के अध्ययन में विशेषरूप से तत्पर है। ब्रह्म का अर्थ वेद होता है और चर्य में जो चर धातु है उसके अर्थ गति अर्थात् ज्ञान, गमन, प्राप्ति और भक्षण हैं। इस प्रकार ब्रह्मचर्य का मुख्य शब्दार्थ वेद का ज्ञान प्राप्त करना सिद्ध होता है।

श्री शंकराचार्य ने "सर्वे वेदा यत्पदमामनन्ति तपांसि सर्वाणि च यद्वदन्ति। यदिच्छन्तो ब्रह्मचर्यं चरन्ति तत्ते पदं संग्रहेण ब्रवीम्योमित्येतत्" - इस कठोपनिषत् के वचन की व्याख्या में 'ब्रह्मचर्य' का अर्थ "गुरुकुलवास-लक्षणम् अन्यद् वा ब्रह्मप्राप्त्यर्थम्" ऐसा किया है अर्थात् गुरुकुल में वास अथवा ब्रह्म-परमात्मा और वेद की प्राप्ति के लिए जो कर्म किया जाय ऐसा किया है।

सूचना

सार्वदेशिक आर्य वीर दल की कार्यकारिणी के निश्चयानुसार प्रान्तीय आर्य वीर दल राजस्थान का शिक्षण-शिविर दिनांक १४ जून १९५९ से २१ जून १९५९ तक श्री ओमप्रकाशजी त्यागी प्रधान संचालक, के संचालन में जोधपुर में लग रहा है। इस शिविर में शारीरिक, बौद्धिक व राष्ट्रीय प्रवृत्तियों का प्रशिक्षण दिया जायगा। ईसाइयों के राष्ट्र-विरोधी कार्यों को रोकने के लिये विशेष शिक्षण दिया जायगा। शिविर में आर्य नेताओं के भाषण व उपदेश आदि का आयोजन किया जायगा। शिविर में सम्मिलित होने के लिये प्रवेश-पत्र, नियमावली आदि कार्यालय से ३०।५।५९ तक प्राप्त करलें।

सुखदेव - संचालक रामस्वरूप आर्यप्रेमी—मंत्री

प्रान्तीय आर्य वीर दल, राजस्थान।

पृ० ४२ का शेष

सनत्कुमार बोले, "परमात्मा स्व महिमा में ही प्रतिष्ठित है। संसार के महिमावान पदार्थों में लोग गो, अश्व, हाथी, स्वर्ण, दास, भार्या, भूमि और रत्न की गणना करते हैं परन्तु सनत्कुमार की सम्मति में ये पदार्थ अल्प महिमा वाले हैं। समग्र विश्व ब्रह्माण्ड जिस परम पुरुष के एक पाद स्थानीय है, उस भूमा परमात्मा की सर्व व्यापकता का बखान करते हुये सनत्कुमार पुनः बोले – वह भूमा ही ऊपर, नीचे, आगे, पीछे, दायें, बायें; – सर्वत्र है। उसे ज्ञात कर यह सब कुछ ज्ञात लिया जाता है — येन ज्ञातं सर्वं इदं विज्ञातं भवति।

छान्दोग्योपनिषद् की यह कथा प्राचीन ऋषियों के विस्तृत शास्त्र-ज्ञान की परिचायक है और साथ ही ब्रह्म तत्व के प्रति उनकी प्रबल जिज्ञासा प्रवृत्ति की सूचक है।

❋—:(०):—❋

शेष पृष्ठ ४५ का

केवल कर्म योग जीवन में एक पहिये की गाड़ी है। कर्म तो बाह्य रूप है। ज्ञान आन्तरिक स्वरूप। कर्म है प्रकृति के सम्पर्क से प्रतिक्रिया। ज्ञान से आत्मा से सम्पर्क होकर आनन्द प्राप्त होता है। प्रकृति की प्रतिक्रिया द्वन्द्व (दुख और सुख है) अतः आन्तरिक पक्ष पर ध्यान रख कर उपासना करना कर्तव्य है।

अतः हम सबको परमात्मा की उपासना श्रद्धा पूर्वक करनी चाहिये।

(❋—❋)

शेष पृ० ४७ का

"आधेनवो धुनयन्तामशिश्वीः
सबर्दुघाः शशया अप्रदुग्धाः।
नव्या नव्या युवतयो
भवन्तीर्महद् देवानामसुरत्वमेकम्।" (ऋ०३।५५।१६)

अर्थात्–' जो दुही नहीं हैं ऐसी गौओं की नाईं अविवाहित बाल्यावस्था से रहित सब उत्तम व्यवहारों को पूर्ण करने वाली कुमारावस्था को उल्लंघन कर यौवनावस्था को प्राप्त होती हुई नवीन नवीन शिक्षा से युक्त विद्वानों द्वारा दिये गये विज्ञान को प्राप्त पूर्ण शिक्षित युवतियाँ गर्भ धारण करें।"

क्रमशः

सम्पादक श्री चांदमल आर्य द्वारा श्री प्रभा प्रेस, जोधपुर में मुद्रित व प्रकाशित।



निन्दन्तु नीति निपुणा यदि वा स्तुवन्तु लक्ष्मीः समाविशतु गच्छतु वा यथेष्टम्।
अद्यैव वा मरणमस्तु युगान्तरे वा न्यायात्पथः प्रविचलन्ति पदं न धीराः ॥ भर्तृहरि

वर्ष १

अंक ४, ५, ६

वेदसुधा

यतो यतः समीहसे ततो नो अभयं कुरु।
शं नः कुरु प्रजाभ्यः अभयं नः पशुभ्यः ॥
यजु० ३६/२२

व्याख्याः— समस्त विश्व में परमेश्वर व्याप्त है। ब्रह्माण्ड का ऐसा कोई कोना नहीं जहां ईश्वरीय सत्ता विद्यमान न हो। ऐसी अवस्था में सच्चा ईश्वर विश्वासी संसार में निर्भय होकर विचरण करता है तथा परम पिता से अभय कामना करता हुआ कहता है कि — 'हे प्रभो, आप इस समग्र विश्व ब्रह्माण्ड में जहाँ २ सर्वत्र सम्यक प्रकार से चेष्टा कर रहे हैं, वहाँ २ हमें अभय बनाइये हमारी प्रजा और हमारे पशु हमें कल्याण और मंगल देने वाले हों तथा हम उनसे निर्भय रहें।

जेठ, आषाढ, श्रावण सं० २०१६ वि०
श्री मद्दयानन्दाब्द १३४

आर्यपथ कार्यालय
आर्य समाज रातानाड़ा
जोधपुर (राजस्थान)

वार्षिक मूल्य ३ रूपये
एक प्रति २५ न० पै०

❋ आर्यपथ के नियम ❋

(१) आर्यपथ प्राचीन वैदिक विचारधारा का प्रसारक और आर्य ऋषियों द्वारा प्रचारित संस्कृति के पुनरुत्थान का पक्षपाती मासिक पत्र है।

(२) यह पत्र प्रतिमास १५ वीं तारीख को प्रकाशित होता है। यदि दिनांक २५ तक न पहुँचे तो नल० से सूचना देने पर दूसरी प्रति भेजी जा सकती है।

(३) वार्षिक मूल्य ३) रू० धनादेश[मनी आर्डर] द्वारा अग्रिम भेजना चाहिये। वी०पी० मँगवाने में ग्राहक को ५० नल्प० अधिक देने पड़ते हैं।

(४) आर्यपथ का नया वर्ष मार्च [फाल्गुन] से होता है। वर्ष का प्रथम अंक विशेषांक होता है।

(५) आर्यपथ के ग्राहक किसी भी मास से बन सकते हैं।

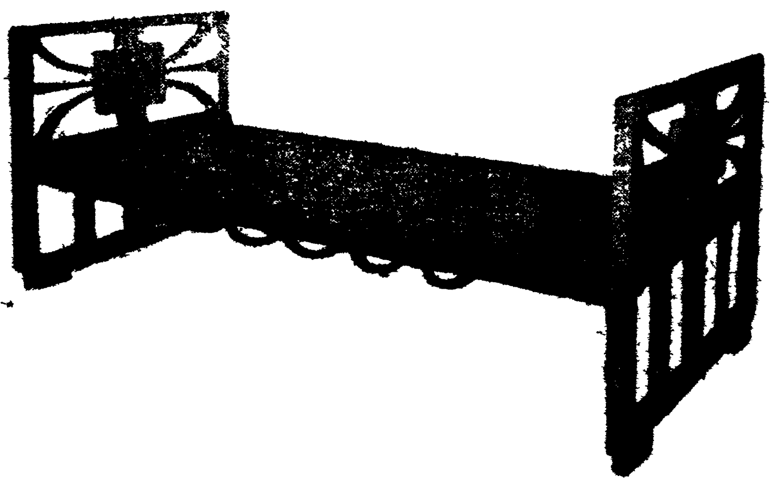
(६) प्रकाशनार्थ लेख और रचनायें सम्पादक आर्यपथ, आर्य समाज, रातानाडा, जोधपुर के पते से आने चाहिये। लेख सरल संक्षिप्त सारगर्भित और मौलिक हो। सैध्दान्तिक और आर्य समाज की जीवन्त समस्याओं के सम्बन्ध मे आलोचनात्मक और विवेचनात्मक लेखों को प्राथमिकता दी जायगी लेख स्पष्ट और शुद्ध हों, तथा कागज के एक ओर लिखे हों। उनका प्रकाशित करना अथवा संशोधित करना सम्पादक के आधीन होगा। अन्यत्र प्रकाशित रचनाओं को स्थान नहीं दिया जायगा। डाक व्यय प्राप्त होने पर अस्वीकृत रचनायें लौटाई जा सकेंगी।

(७) विज्ञापन के लिये अग्रिम धन का आना आवश्यक है। सम्पूर्ण पृष्ठ के १०) रू० और आधे पृष्ठ के ५) रू०। अश्लील और गर्हित रुचि के विज्ञापन नहीं छापे जायेंगे।

(८) पत्र व्यवहार के समय ग्राहक संख्या अवश्य लिखें।

(९) पत्र की सामग्री और उसके बाह्य प्रसाधनके सम्बन्ध में पाठको से सुझाव भेजने की प्रार्थना की जाती है।

(१०) पत्र का नमूना निःशुल्क भेजा जाता है।





आर्य समाज के संगठन में दरारें

ऋषि दयानन्द ने आर्य समाज का विधान प्रजातांत्रिक पद्धति पर निर्मित किया। उन्नीसवीं शताब्दी के उत्तरार्द्ध में जिस समय आर्यसमाज की स्थापना हुई उस समय लोक तंत्र अपनी प्रयोग कालीन अवस्था में था। यूरोप में लोक तंत्र का उस समय तक पर्याप्त प्रचार हो चुका था, परन्तु भारत में आर्य समाजने ही सर्व प्रथम उसे क्रियात्मक रूप दिया जब कि राजनैतिक क्षेत्र के लोग इससे सर्वथा अपरिचित ही थे।

यद्यपि आर्य समाज ने प्रजातंत्र के आधार पर अपने संगठन का निर्माण किया परन्तु कालान्तर में यही प्रजातंत्र प्रणाली उसके लिये अभिशाप बन गई। कारण यह है कि आर्य समाज केवल एक सभा मात्र ही नहीं है। वह एक सार्वभौमधर्म है जिसका आधार शिला के रूप में ईश्वरीय ज्ञानवेदके सुप्रतिष्ठित किया गया है। अतः यदि कोई धर्मप्रचारक संस्था लोक तंत्र पद्धति को स्वीकार करती है तो उसे करते समय उसे कुछ प्रतिबंधों में बांधना आवश्यक है। आर्यसमाज में यह त्रुटि रह गई। उसने यद्यपि सभासदों के लिये सदाचार का प्रतिबंध अवश्य लगाया, परन्तु इस 'सदाचार' की न तो कोई व्याख्या या परिभाषा ही की गई और न किसी व्यक्ति को आर्य समाज का सदस्य बनाते समय इस बात का ध्यान ही रक्खा गया कि वह सदाचार के उन नियमों का पालन भी करता है या नहीं, जिनका उल्लेख आर्यसमाज के उपनियमों में हुआ है।

परिणाम स्पष्ट है। आर्यसमाज की सत्ता और नियंत्रण जो विद्वान् सन्यासियों और पूज्य ब्राह्मणों के हाथ में होनी चाहिये, वह आज वकीलों, डाक्टरोंऔर व्यवसायकुशल व्यक्तियों के हाथोंमें है जिनमें सांसारिक योग्यता तो चाहे पर्याप्त मात्रा में हो परन्तु जो आर्य समाज जैसी धर्म और आध्यात्म प्रधान संस्था का नेतृत्व करने के लिये सर्वथा अयोग्य हैं। ऋषि दयानन्द ने सत्यार्थ प्रकाश के छठे समुल्लास में जहाँ मन्वादि धर्मशास्त्रकारों के आधार पर राजनीति का विधान किया है वहीं उन्होंने स्पष्टलिखा है कि हजारों मूर्खों की अपेक्षा एक विद्वान् सन्यासी या ब्राह्मण की सम्मति का अधिक महत्व है। परन्तु आज स्थिति सर्वथा विपरीत है। आज हम देखते हैं कि छोटी से छोटी समाज से लेकर बड़ी से बड़ी सभाओं तक में दल बंदी विद्यमान है। स्वार्थी लोग अपने क्षुद्र स्वार्थों की सिद्धि के लिये अपने सहयोगियों की सहायता से पदों पर आसीन हो जाते हैं और तब तक हटने का नाम नहीं लेते जब तक कि उनसे भी अधिक प्रबल प्रतिरोधियों से उनका मुकाबला न हो।

यह स्थिति सर्वथा अवांछनीय है। यदि आर्य समाज जीवित रहना चाहता है और इस प्रगतिशील संसार के प्रति द्वन्द्वितापूर्ण संघर्षमय समरांगण में कुछ करतब दिखाना चाहता है तो उसके लिये यह अत्यन्त आवश्यक है कि वह

अपने उत्तरोत्तर जर्जर होने वाले ढांचे को सुदृढ़ बनाने का उपाय सोचे। अन्यथा यह पार्टीबाजी और दल बंदी जो आज समाज के उच्च कोटि के नेताओं को भी भ्रमित किये हुये है एक दिन आर्यसमाज के अस्तित्व को ही समाप्त करके दम लेगी।

बिगत ३ मासों में आर्य समाज के सर्वोच्च संगठन सार्वदेशिक सभा और अन्यान्य प्रान्तों की अपेक्षा सर्वाधिक शक्ति शाली प्रान्त पंजाब की प्रतिनिधि सभा में जो कुछ हो रहा है वह किसी से छिपा हुआ नही है। सार्वदेशिक सभा के इस वर्ष के वार्षिक अधिवेशन का दृश्य जिस ने भी देखा वह इस बात को अवश्य स्वीकार करेगा कि आर्यों की शिरोमणि सभा के सभासदों की बैठक में जैसी शालीनता, सौम्यता, सभ्यता और अनुशासन का वातावरण रहना चाहिये उसका इस अधिवेशन में नितान्त अभाव था।

यह तो स्पष्ट ही है कि इस बार के निर्वाचन में दो तीन प्रान्तों के सदस्यों ने मिलकर कुछ निश्चय किया और चूँकि सभा में उन २ प्रान्तों का स्पष्ट बहुमत था, अतः उन्हें अभीष्ट सफलता प्राप्त हुई। हम निर्वाचन पर कुछ भी टिप्पणी न करते हुये इतना निवेदन करना चाहते हैं कि कुछ प्रान्तों के प्रतिनिधि संख्या में अत्यधिक होते हैं जैसे पंजाब और उत्तर प्रदेश तथा कुछ अन्य प्रान्तों, यथा बम्बई, बंगाल, मध्यप्रदेश और राजस्थान में प्रत्येक ३-४ प्रतिनिधियों से अधिक नहीं लिये जाते। ऐसी परिस्थिति में एक दो प्रान्तों के प्रतिनिधि जो निर्णय या निश्चय कर लेते हैं वह स्वीकार हो जाता और अल्प मत वाले प्रान्तों के प्रतिनिधि केवल मूक दृष्टा मात्र रह जाते हैं। अस्तु।

यह तो हुई सार्वदेशिक सभा की अवस्था। अब पंजाब के जालन्धर और हरियाना क्षेत्रों के आर्य नेताओं में परस्पर सिरफुटौवल हो रही है, वह किसी से छिपा नहीं है। पंजाब सभा के सब से पुराने कार्य कर्ता और अधिकारी महाशय कृष्णजी का सभा से आधी शताब्दी के पश्चात् सम्बन्ध विच्छेद हुआ। तत्पश्चात वैद्य सत्यव्रत द्वारा सभा कार्यालय की तालाबंदी, सभा द्वारा वैद्यजी का सभा और समाज के सभी पदों से पृथक करना, और वैद्यजी द्वारा सभा के मान्य अधिकारियों पर रुपये के गोलमाल आदि के ४२० धारा के अन्तर्गत अभियोग चलाना आदि सभी घटनायें किस ओर संकेत कर रही है? क्या यह आर्यसमाज के विघटन का प्रारम्भ तो नहीं है? यह सुनने में आरहा है कि इस विवाद का आपस में सुलझाने की चेष्टा हो रही है और आर्य समाज का मान्य सन्यासीवर्ग इसके लिये कृत निश्चय है। यदि यह झगड़ा आर्य समाज के व्यक्ति आपस में बैठ कर निपटा लेते हैं तब तो अच्छा ही है अन्यथा इसविवाद की वृद्धि से आर्य समाजके यश, सम्मान, प्रतिष्ठा और उसकीमर्यादा की जो स्पष्ट हानि हो रही है वह नितान्त खेद जनक है।

अन्त में हम यही निवेदन करना चाहते हैं कि आर्य समाज के कर्णधारों ने समय रहते इस कठिन और निराशाजनक परिस्थिति पर नियन्त्रणनहीं किया तो एक दिन आयगा जब कि आर्य समाज एक संगठन के रूप में समाप्त हो जायगा। ऋषि दयानन्द और उनके सिद्धान्त अमर रहेंगे, परन्तु आर्य समाज का कोई नाम लेवा भी नही रहेगा।

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टिप्पणियाँ

ब्रह्म कुमारियों की संस्था पर प्रतिबन्ध लगाया जाय

समाचार पत्रों के पाठक ब्रह्म कुमारी संस्था के अनैतिकता पूर्ण कार्यों और धर्म के नाम पर पाखण्ड और दुराचार को प्रोत्साहन देने वाले उसके कार्य क्रम से भलीभाँति परिचित होंगे। जब से श्री रामगोपालजी शालवाले ने इसके विरुद्ध अपना मोर्चा लगाया है तब से इस पाखण्ड पूर्ण समाज के संचालकों और धर्म के नाम पर भोलीभाली सन्नारियों के धर्म को दूषित करने वाले धूर्तों को इस मंडली में खलबली मच गई है।

ब्रह्म कुमारी संस्था के संचालिकाओं ने आदरणीय शालवाले जी को अनेक दुर्वचन कहे हैं और उन पर मुकदमे चलाने की भी धमकी दी है। परन्तु पाखण्ड और पापाचार के महान विध्वंसक दयानन्द के सच्चे शिष्य ऐसी धमकियों से भय भीत होने वाले नहीं है।

आर्य समाज को चाहिये कि वह ब्रह्म कुमारी संस्था के विरुद्ध जनमत जाग्रत करें और आबूशैलशिखर तथा दिल्ली आदि उक्त संस्था के प्रमुख केन्द्रों पर चलने वाले कार्यक्रमों का पता लगा कर जनता में इसका भण्डाफोड़ करें। यह संस्था अपने आपको 'ईश्वरीय' कहती है और दिल्ली में इसने अपना एक ईश्वरीय विश्व विद्यालय खोल रक्खा है। अपने आपको ईश्वरीय कहने वाले ईश्वर की आज्ञाओं का उल्लंघन कर सती साध्वी स्त्रियों को उनके गृहस्थ बंधन से क्यों च्युत करते हैं? क्या इनका, उनके पास कोई उत्तर है। आज आर्य समाज पुनः ऐसे पाखण्डियों को शास्त्रार्थ के लिये खुली चुनौती दे और जहां २ यह संस्था कार्य कर रही है, वहाँ २ निर्भीक होकर इसका खण्डन किया जाय ऐसा करके आर्य समाज एक महान लोकोपकारी कार्य करेगी।

प्रान्तीय सभाओं से एक निवेदन ---

अकसर यह देखा जाता है कि आर्य समाजों के वार्षिक निर्वाचनों के लिये किसी निश्चित तिथि की नियुक्ति प्रान्तीय सभाओं द्वारा नहीं की जाती। परिणाम यह होता है कि आर्य समाजों के निर्वाचन वर्ष भर तक चलते ही रहते हैं और प्रान्तीय सभा में उनके प्रतिनिधित्व को लेकर भी अनेक बखेड़े होते रहते हैं। पंजाब सभा की इस आज्ञा को देख कर हमें अत्यन्त संतोष हुआ कि उक्त प्रान्त की समाजें एक निश्चित तिथि के पूर्व तक अपना २ निर्वाचन करलें और प्रतिनिधियों का भी चुनाव करलें।

हम राजस्थान प्रांत की प्रतिनिधिसभा से भी यह निवेदन करना चाहते हैं कि वह भी इस प्रान्त की समाजों के वार्षिक अधिवेशनों और चुनावों न समानता लाने के लिये इस प्रकार के आदेश जारी करें। अन्यथा देखा तो यहाँ तक गया है कि किसी २ आर्य समाज के अधिकारी अपने क्षुद्र स्वार्थों के वशीभूत होकर २-३ वर्ष तक समाजों के पदों से चिपके रहते हैं। दुख तो तब होता है जब यह देखा जाता है कि ऐसी समाजों के अन्तरंग सभासद भी आंख मूँदकर ऐसे अधिकारियों के अप्रजातांत्रिक कार्यों के लिये अपनी मौन स्वीकृति दे देते है और सभा के पदाधिकारियों के ध्यान में ऐसे तथ्यों के होने पर भी वे कोई कार्य वाही करने में अपने को विवश अनुभव करते है। यदि आर्य समाजों में ऐसी धांधलियां चलती रही तब तो उसमें प्रजातंत्र की आत्म हत्या ही समझना चाहिये। प्रशंसित सभा इस ओर ध्यान देवे।

हमारी विचारधारा

ऋषि दयानन्द की उत्तराधिकारिणी: परोपकारिणी सभा

[ले० श्री पं० भवानीलाल भारतीय एम० ए०, सिद्धान्त वाचस्पति, सदस्य-सार्वदेशिक आर्य प्र० सभा]

महर्षि दयानन्द ने उदयपुर के महाराणा सज्जनसिंह के प्रधानत्व और कविराज श्यामलदास के मंत्रित्व में अपनी उत्तराधिकारिणी परोपकारिणी सभा की स्थापना की। इसका मुख्य प्रयोजन था महर्षि के स्वर्गारोहण के पश्चात् देशदेशान्तरों और द्वीप द्वीपान्तरों में वैदिक धर्म का प्रचार करना और वैदिक यंत्रालय के द्वारा ऋषि कृत वैदिक ग्रन्थों का मुद्रण, प्रकाशन और प्रचार। महर्षि के अनन्य भक्त और आर्यसमाज की पहली पीढ़ी के सभी नेता उस समय परोपकारिणी सभा के सभासद बनाये गये। राय मूलराज, महादेव गोविन्द रानाडे, गोपालराव, हरि देशमुख, श्यामजी कृष्ण वर्मा आदि प्रभावशाली लोग परोपकारिणी के प्रारम्भिक सदस्य थे।

कालान्तर में पुरानी पीढ़ी का स्थान नई पीढी ने लिया। जोधपुर के महाराजा सर प्रतापसिंह, शाहपुराधीश नाहरसिंहजी जो महर्षि के परम भक्त आर्य नरेश थे आदि राजपुरुषों ने भी अनेक वर्षों तक परोपकारिणी सभा का नेतृत्व किया। शाहपुराधीश श्री नाहरसिंहजी के पश्चात उनके पुत्र स्व० शाहपुराधीश श्री उम्मेदसिंहजी भी परोपकारिणी सभा के प्रधान रहे अजमेर के सुप्रसिद्ध आर्य नेता दीवान बहादुर श्री हरविलासजी शारदा ने आजीवन परोपकारिणी सभा का कार्य किया। सम्प्रति इस सभा के प्रधान आर्य-जगत के ख्याति प्राप्त नेता महाराय कृष्णजी और मंत्री अजमेर निवासी डा० मानकरण शारदा हैं जो स्व० देशभक्त कुंवर चांदकरण शारदा के अनुज हैं।

परोपकारिणी सभा का विधान महर्षि के जीवन काल में ही रजिस्टर्ड हो गया था। इस विधान में एक बहुत बड़ी त्रुटि रह गई, जिसके परिणाम-स्वरूप परोपकारिणी सभा आर्य जनता की आशाओं और आकांक्षाओं को पूरा करने में असमर्थ रही। परोपकारिणी सभा के सभासदों में से किसी का स्थान रिक्त होने पर उस स्थान की पूर्ति करने का अधिकार सभा के उस समय के अन्य सभासदों को ही दिया गया। ऐसी स्थिति में आर्यजनता और आर्य समाजें परोपकारिणी सभा के कार्यों में चाहने पर भी कोई हस्तक्षेप नहीं कर सकती क्यों कि उनका कोई प्रतिनिधि परोपकारिणी सभा में तब तक नहीं लिया जा सकता जब तक कि सभा के मौजूदा सदस्य ही उसे स्वीकार न कर लें। परोपकारिणी का यह विधान आर्यसमाज में प्रचलित प्रजातांत्रिक विधान के सर्वथा प्रतिकूल है।

परोपकारिणी सभा के विधान में जो मौलिक त्रुटि रही उसके भयंकर परिणाम भी हमारे समक्ष आये। सभा का आधिपत्य जिन लोगों के हाथों में रहा, वे अपने मनपसन्द सदस्यों को लेकर रिक्त स्थान पूर्ति करते रहे जिसके फलस्वरूप कभी २ तो इसके अधिकांश सदस्य किसी न र विशेष या परिवार विशेष तक ही बंधे रह गये।

यह तो विधान की बात हुई। अब जरा परोपकारिणी सभा द्वारा किये गये कार्यों का विचार कि

जाय। यह आशा की गई थी कि यह सभा महर्षि दयानन्द की स्थानापन्न होगी और उनके किये गये कार्य को पूरा करेगी परन्तु हमें दुख के साथ लिखना पड़ता है कि परोपकारिणीसभा नेअपने संस्थापक ऋषि की इच्छाओं को पूरा नहीं किया। देश देशान्तर और द्वीप द्वीपान्तर में वेद धर्म के प्रचार की बात ही छोड़िये - यह कार्य तो परोपकारिणी सभा ने कभी हाथ में लिया ही नहीं-उसने महर्षि के तथा अन्य आर्ष वैदिक ग्रन्थों के प्रकाशन और मुद्रण के महत्वपूर्ण कार्य में भी अत्यन्त असावधानी रक्खी। कुछ उदाहरण प्रस्तुत किये जा रहे हैं।

ऋषि के ग्रन्थों का मुद्रण अत्यन्त असावधानी के साथ किया गया। मुझे स्मरण है कि डीडवाना (राजस्थान) के शास्त्रार्थ के समय हम लोग सनातनी पण्डित माधवाचार्य से मिलने गये। वार्तालाप के प्रसंग में उसने कहा — "तुम आर्यसमाजी अपने ग्रन्थों को तो शुद्ध छाप नहीं सकते।। मैंने सत्यार्थ—प्रकाश के अब तक के प्रकाशित २३ संस्करणों की परस्पर तुलना की है, और मैं यह कह सकता हूँ कि कोई भी दो संस्करण सम्पूर्ण रीत्या मेल नहीं खाते। जब तुम्हारे आचार्य के ग्रन्थ की यह दशा है तो तुम अन्य ग्रन्थों में प्रक्षेपादि की क्या चर्चा करते हो" बात कुछ अंशों में सत्य है। यदि सत्यार्थप्रकाश के भिन्न-२ संस्करण ही परस्पर में भिन्नता रक्खें तो हम अपने विरोधियों को क्या कह सकते हैं?

वैदिक यंत्रालय से मुद्रित होने वाले अन्य ग्रन्थों के मुद्रण में कितनी असावधानी बरती जाती है यह निम्न तथ्यों से विदित होगा।

[१] अथर्ववेद की संहिता वैदिक यंत्रालय ने प्रकाशित की। उसमें ७ पृष्ठों का शुद्धाशुद्धि पत्र छपा है। सात पृष्ठों में शुद्धिपत्र छपने का यह अर्थ हुआ कि उक्त वेद संहिता में मुद्रण की सहस्रों भूलें हैं। हम अपने मान्य धर्म ग्रन्थों के प्रकाशन में इतनी असावधानी बरतते हैं और मुकाबला करना चाहते हैं उन लोगों से जिनके प्रेस में प्रथम तो कोई मुद्रण सम्बन्धी भूल होती ही नहीं और होती भी है तो स्वयं स्याही से सुधार कर ही विक्रयार्थ भेजते है। ७ पृष्ठों के शुद्धिपत्र वाला अथर्ववेद परोपकारिणी सभा का यह एक अनोखा तोहफा है।

[२] ऋषि कृत अमर ग्रन्थ सत्यार्थप्रकाश वैदिक—यंत्रालय से छपा। उसमें विषय सूची गायब और तारीफ यह है कि यंत्रालय के प्रबंधक को इसका ज्ञान ही नहीं।

[३] ऋषि कृत ऋग्वेद भाष्य ९ या १० भागों में प्रकाशित हुआ था। उसके सम्पूर्ण भाग आज उपलब्ध नहीं है। अब यदि कोई ऋषि भाष्य का प्रेमी सम्पूर्ण ऋषि भाष्य खरीदना चाहे तो उसे निराश होना पड़ेगा। आज ऋग्वेद भाष्य के द्वितीय, तृतीय, चतुर्थ और पंचम खण्ड अनुपलब्ध हैं। इसी प्रकार यजुर्वेद के चार भागों में दूसरा भाग नहीं मिलता।

[४] ऋषि के ग्रन्थों की हस्तलिखित प्रतियां परोपकारिणी सभा द्वारा अधिकृत दयानन्द आश्रम में विद्यमान हैं। परन्तु यह कभी चेष्टा नहीं की जाती कि प्रकाशित होने वाले ग्रन्थों का मिलान हस्तलिखित प्रतिलिपियों से करा लिया जाय। यद्यपि अनेक बार इसके लिये चेष्टा की गई, परन्तु कर्मचारी पण्डितो के परिवर्तन से यह कार्य जैसा होना चाहिये वैसा नहीं हुआ।

[५] फिर परपकारिणी सभा द्वारा प्रकाशित जो संस्करण उपलब्ध भी हैं उनका मूल्य अधिक है। ऐसी स्थिति में जनता ऋषि कृत ग्रन्थों की ओर आकृष्ट

क्यों होने लगी। जिस प्रकार बाईबिल सोसाइटी अथवा गीता प्रेस अपने प्रकाशनों को लागत मूल्य पर वितरित करते हैं उसी प्रकार की व्यवस्था श्री महयानन्दसरस्वती की उत्तराधिकारिणी परोपकारिणी सभा को भी करनी चाहिये। परन्तु यहाँ तो सब कुछ उल्टा ही हो रहा है। यजुर्वेद संहिता मूल जो पहले दो रुपये में मिलती थी, आज वह ४) रु० में मिलती है। शिवशंकर शर्मा कृत उपनिषद् भाष्य जो पहले ४ रु० में मिलते थे अब उनका मूल्य २॥ गुना बढ़ाकर १०) रु० कर दिया है।

[६] ऋषि के अनेक ग्रन्थों के प्रकाशन की तो सभा को फुर्सत ही नहीं है, क्योंकि यह आम शिकायत पहले से सुनते आ रहे हैं कि परोपकारिणी सभा द्वारा संचालित वैदिक यंत्रालय के पास रेलवे का मुद्रण कार्य ही इतना रहता है कि उसे आर्ष ग्रन्थों के छापने का अवकाश नहीं मिलता यह स्थिति है उस सभा की जिसको वैदिक धर्मोद्धारक प्रातः स्मरणीय ऋषि दयानन्द ने स्थापित किया और यह आशा की थी कि इस सभा के द्वारा भारत में नवजागरण का कार्य हो सकेगा अब प्रश्न यह शेष रह जाता है कि इस परिस्थिति में हमारे लिये क्या कर्त्तव्य है क्या परोपकारिणी को इसी प्रकार निर्वीय और अकर्मण्य रूप में ही जीवित रहने का अधिकार है अथवा उसके द्वारा ऋषि दयानन्द के मिशन की पूर्ती के लिये कुछ श्रेष्ठ कार्य होने की हम आशा रक्खें। वैधानिक दृष्टि से तो परोपकारिणी सभा के कार्यों में हस्तक्षेप करने का अधिकार उसके सभासदों के अतिरिक्त किसी को नहीं है। परन्तु हम यह भी जानते हैं कि परोपकारिणी सभा से भी एक ऊँची हस्ती है और वह है ऋषि की अनुयायिनी लक्ष लक्ष आर्य जनता। यह आर्य जनता परोपकारिणी सभा से यह पूछ सकती है कि ऋषि की भावनाओं और उसकी आकांक्षाओं के प्रति यह खिलवाड़ क्यों किया जा रहा है?

आवश्यकता इस बात की है कि आज परोपकारिणी सभा में फैली अव्यवस्था के विरुद्ध संगठित जनमत जाग्रत किया जाय। आर्य समाजें, प्रान्तीय सभायें और सार्वदेशिक सभा परोपकारिणी के कर्णधारों पर इस बात के लिये जोर डालें कि ऋषि कृत ग्रन्थों और वेदादि शास्त्रों के मुद्रण और प्रकाशन की सुव्यवस्था की जाय। यदि सम्भव हो तो परोपकारीणी के विधान में संशोधन कराने की चेष्टा की जाय ताकि उसमें लोक तंत्र पर आधारित प्रणाली के अनुसार आर्य जनता के प्रतिनिधियों को स्थान मिल सके। फलस्वरूप ऋषि दयानन्द का वह दिव्य स्वप्न साकार हो सके जिसकी कल्पना उनके मस्तिष्क में इस सभा के निर्माण के समय थी।

* * *

नानाश्रान्ताय श्रीरस्ति इति रोहित शुश्रम।
पापो नृषद्वरो जन इन्द्रइच्चरतः सखा ॥
चरैवेति, चरैवेति।

हे रोहित, सुनते हैं कि श्रम से जो नहीं थका ऐसे पुरुष को श्री नहीं मिलती। बैठे हुए आदमी को पाप धर दबाता है। इन्द्र उसी का मित्र है, जो बराबर चलता रहता है इस लिये चलते रहो, चलते रहो।

आर्ष पथ कौन सा ?

श्री राजेन्द्र 'जिज्ञासु' नरवाना (पंजाब)

मानव पथ, कल्याण पथ तो वेद का ही पथ है। वेद का पथ ही आर्ष पथ है। भटकती जगती को सरल और सीधा वेद पथ दर्शा कर ऋषि दयानन्द ने मानव समाज का बड़ा भारी उपकार किया है। मानव आज नाश और ह्रास की खाई में गिरता जा रहा है। दानवता आज मानवता की छाती पर दनदनाती है। विश्व कल्याण के लिए पुनः ऋषि के सन्देश को विचार कर हमें संसार के उपकार और उद्धार के लिए इसे आर्ष पथ पर लाना चाहिए।

देव दयानन्द की सबसे बड़ी देन मानव समाज को यह है कि उसने भले बुरे में भेद कर दिया। हमारा दावा है कि कोई मत, पंथ बुराई और भलाई अथवा पाप पुण्य की समस्या का समाधान नहीं कर सकता। केवल वैदिक धर्म ही ईश्वरीय ज्ञान होने के कारण इस गुत्थी को सुलझा सकता है। वेद विद्या को लगा हुआ ताला तोड़ने का श्रेय ऋषि को ही है। ससार के वे पंथ जो "सब कुछ ब्रह्म ही ब्रह्म है" के भ्रम में फसे हुए हैं वे भला क्या बताएंगे कि शुद्ध बुद्ध, सच्चिदानन्द परमेश्वर कैसे भ्रम का शिकार हो गया? जब ब्रह्म के सिवा है ही कुछ नहीं तो पाप कहां से आ गया? चोरी, डाका, व्यभिचार और लूट खसोट उसी का गुण ठहरा न? तार्किक दयानन्द के तर्क के तीरों सेघायल यह भ्रम पंथी उत्तर देने में असमर्थ है।

आर्य राष्ट्र का सत्यानाश इस अवैदिक मत ने कर दिया। जहां वेद माता ने "यो जागार तमृचः कामयन्ते..........॥ (ऋ० ५०४४०१४) अर्थात् जागने वाले की ऋचायें चाहना करती हैं, जागने वाले को यश और ऐश्वर्य प्राप्त होता है की लोरी देकर मानव को कल्याण मार्ग का पथिक बनने का आदेश दिया है। वहां इस अवैदिक वाद ने "संसार स्वप्न है" का भ्रम फैला कर आर्य राष्ट्र की कीर्ति, वैभव और स्वाधीनता की हत्या कर दी। इन तर्क हीन विचारों को धर्म समझ कर राष्ट्र की संतान निस्तेज और भीरु हो गई। चैतन्य तरुण धर्म से दूर हो गये और फैशन से नास्तिक बन गये। यदि ऋषि का प्रगतिशील पथ 'यो जागार........।' का प्रचार किया जावे तो युवा शक्ति आर्य ध्वज को अवश्य थामेगी।

किसी ने प्रचार किया कि अमुक पर विश्वास लाओ पाप मुक्त हो जाओगे। किसी ने किसी द्वारा पाप के दण्ड से मुक्त करवाने का आश्वासन दिया। इसका यही तो भाव है न कि धर्म का सार यही है कि पाप करते जाओ फिर भी धर्मात्मा ही रहोगे। धर्म दूतों की कृपा से ईश्वर के न्याय त्रिशूल के प्रहार से बच जाओगे। भला ये पंथ ससार का सुधार और उद्धार क्या कर सकते हैं?

इस दम्भ पर कर्म सिद्धान्त का बम्ब फेंक कर ऋषि ने मानवता की लाज बचाली। यही उस की बड़ी भारी देन है।

कुछ पंथ यह मानते है कि केवल ईश्वर से सृष्टि रचना हुई है अर्थात सृष्टि रचना से पूर्व सिवा ईश्वर के कुछ न था। यहवादभीयह नहीं समझा सकते कि जब सब कुछ प्रभु से बना है और कुछ था ही नहीं तो फिर बुराई को किसने जन्म दिया?

ऋषि दयानन्द ने वेद के आधार पर सत्यार्थ प्रकाशकी भूमिका में इस उलझन को सुन्दरता से सुलझाया है कि मनुष्य की आत्मा हठ और दुराग्रह से पाप की ओर झुकता है। ऋग्वेद में आता है कि प्रभु में अपनी दीनता अर्थात अल्पज्ञता के कारण

कर्त्तव्य पथ से भटक गया। जीव की अल्पज्ञता ही पाप का कारण है। पाप क्या है? ईश्वर के सृष्टि नियमों का उल्लंघन पाप है। इस प्रकार के सरल तर्कयुक्त संगत विचार देव ने देकर मानव जाति को भारी देन दी है।

नास्तिक भी सुख शांति चाहते हैं परन्तु जीव और ईश्वर की सत्ता के बिना अन्धी प्रकृति से किसी समस्या का समाधान नहीं हो सकता। त्याग की भावना मनुष्य में क्यों है? बलिदान का भाव कहां से आ गया? हम दूसरों को दुःख देकर सुख क्यों न पावें? इन प्रश्नों का नास्तिक उत्तर क्या देंगे?

कम्युनिस्ट विचार के लोग जो धन को ही पाप की जड़ मानते है वे इस बात का क्या उत्तर देंगे कि स्त्री के मोह में किसी का वध क्यों किया जाता है? पुत्रों के मोह में माता पिता दुःख क्यों पाते हैं? क्रोध और अहंकार की तृप्ति के लिए ऐसे कर्म क्यों किये जाते हैं जिनमे धन की ही हानि होती है? यदि खाने पीने रोटी कपडे की समस्या के समाधान से ही बुराई का अन्त सम्भव होतो रूस देश जो आर्थिक समस्याओं का आदर्श समाधान कर चुकने का दावा करता है उस रूस में बेरिया इत्यादि गण मान्य, क्रांतिकारी, अनुभवी साम्यवादी नेताओं को जनद्रोह के अभियोग में फांसी और गोली की भेंट न किया जाता। स्पष्ट है कि आर्थिक सम्पन्नता के साथ साथ जीवन की सर्वाङ्गीन उन्नति कुछ और भी चाहती है।

ऋषि दयानन्द संसार के धार्मिक महापुरुषों में पहले सन्त हैं जिन्होंने अपने पूर्वज ऋषियों की भांति आध्यात्मिक उन्नति के साथ साथ सामाजिक और आर्थिक उन्नति की कामना की। वेद को नीचा दिखाने के लिए जिस भाषा विज्ञान और विकासवाद का आश्रय लिया गया था आज थक कर चूर होने के बाद ये वाद यह स्वीकार करने पर विवश हो गये है कि "The problem of origin of language does not admit of any satisfactory solution.' Language by अर्थात भाषा की उत्पत्ति के प्रश्न का कोई सन्तोष जनक समाधान नही। यहीं बस नही आज ऋषि के आर्षसिद्धान्त को मान्यता मिलरही है कि आदि मानव को परमेश्वर द्वारा भाषा बोध कराया गया।

Some scholars [among them puite tecently W·Schmidt] see the insuffici-eucy of usual theories and giving up all attempt [illegible] expai ning it in a naturoe way fall back on the religious dolif eh at the first language was bireetey given to frst men dy God throu gh mirele Enceylo paebiabrita nica vol 13 page 702 1951 mpression

भाव यह है कि आज भी श्मिटजैसे कई विद्वान भाषा विज्ञान की वर्तमान प्रचलित अयुक्तता तज कर इस धार्मिक सिद्धान्त के पोषक बन गये हैं कि आदि मानव को प्रभु ने भाषा बोध कराया था।

ऋषि ने भीरूकायर आर्य राष्ट्र के शिशुओं को जोबोलेसोअभयवैदिकधर्म की जय घोकदेकरक्याकम क्रांति की है। जन साधारण भी अन्य देशो में दर्शन से पीछा छुड़ाने के लिये उस काल [illegible] विलीन कर सुख का श्वास लेते है परन्तु यह [illegible] हुये चढ़ा भारतीय समाज मृत [illegible] और [illegible] के भी भूत प्रेत चुडैल [illegible] अस्तित्व से डरता था। ऋषिने वेद माता की गोद में आकर अभय बनेने का आर्ष पथ बताकर महान कल्याण किया

मानव मत डर, किसी से न डर, न रात से न दिन से, न मित्र से न शत्रु से

ऋषि की औरदेन बताऊँ। राष्ट्र उत्थानके लिये ऋषि की महता सत्यार्थ प्रकाश से आंकि जाती है वेद भाष्य आर्याभिविनय, व्यवहार भानु का भी कुछ ध्यान किया गया है परन्तु संसकार विधि की खोज अभी अधूरी है। क्या देव की देन कम है कि नवजात शिशु के निर्माण के लिए बच्चे को यह बताओ तू आर्य अमृत पुत्र है इत्यादि कायर जातिको वीर बनाने का यही मानव पथ है दैवी पथ है यही कल्याण पथ

क्या पुराणोक्त श्री कृष्णचरित्र आलंकारिक है ?

[ले० श्री प० धर्म देवजी विद्यामार्तण्ड]
गुरु कुल विश्व विद्यालय कांगड़ी

[प्रस्तुत लेख में सु प्रसिद्ध विद्वान् पं० धर्मदेवजी ने पुराणोक्त श्री कृष्ण चरित्र का आलोचनात्मक विवेचन करते हुये प्रमाण पुरस्सर यह सिद्ध कर दिया है कि पुराणोपबृंहित कृष्ण चरित्र वस्तुतः महा मानव कृष्ण के चरित्र को विकृत स्वरूप में प्रस्तुत करता है और जो लोग उसे आलंकारिक मान कर उसका परिमार्जन करने की चेष्टा करते हैं वे भी भ्रमग्रस्त ही हैं क्यों कि पुराणोंमें ऐसे स्पष्ट अश्लील अंशोंके रहते उनका आलंकारिक माना जाना असम्भव ही है। श्री कृष्ण जन्माष्टमी के पुण्य पर्व पर हम ऋषि दयानन्द निर्दिष्ट महा पुरुष—योगि वर्य कृष्ण के चरित का कीर्तन करें और पुराणोक्त मिथ्या बातों के भ्रम जाल से अपने आपको मुक्त करें — यही हमारे लिये श्रेयष्कर होगा। —संपादक]

महर्षि दयानन्द ने सत्यार्थ प्रकाश के एकादश समुल्लास में एक स्थान पर लिखा है कि देखो, श्री कृष्ण का इतिहास महाभारत में अत्युत्तम है। उनका गुण, कर्म,स्वभाव और चरित्र आप्त पुरुषों के सदृश है जिसमें, अधर्म का आचरण श्री कृष्ण ने जन्म से मरण पर्यन्त बुरा काम कुछ भी किया है ऐसा नहीं लिखा और इस भागवत वाले ने अनुचित मनमाने दोष लगाये हैं दूध, दही, मक्खन आदि की चोरी और कुब्जा दासी से समागम, परस्त्रियों से रास मण्डल, क्रीड़ा आदि मिथ्या दोष श्रीकृष्ण में लगाये हैं। इनको पढ़पढ़ा सुन सुना के अन्य मत वाले श्री कृष्ण की बहुत सी निन्दा करते हैं। जो यह भागवत नहीं होता तो श्री कृष्ण के सदृश महात्माओं की झूठी निन्दा क्यों कर होती ?' (सत्यार्थ प्रकाश ११ समुल्लास पृ: ४२२ आर्य साहित्य मण्डल प्रकाशन चतुर्थ आवृत्ति)

इस पर भी माधवाचार्य शास्त्री जैसे हमारे बहुत से पौराणिक भाई और उनके नवीन पक्ष पोषक श्री प० श्री पाद दामोदर सातवलेकरजी जैसे वैदिक विद्वान भी कहते हैं कि स्वामी दयानन्दजी ने पुराणोक्त श्री कृष्ण चरित्रके अभिप्राय को न समझ कर यह समालोचना की है। उनमेंसे श्री माधवा चार्य शास्त्री जैसे कई महानुभाव तो यह कहते हैं कि रास लीलादि के समय श्री कृष्ण की आयु केवल ७ वर्षकी थी, अतः उन पर व्यभिचारादि का दोष लग ही नहीं सकता। अन्य कई महानुभाव रासलीलादि की आलंकारिक आध्यात्मिक व्याख्या तथा अर्थ करते हैं। इनमें से एक भारत धर्म महा मंण्डल काशी के प्रधान स्वामी दयानन्द बी० ए० ने कभी कहा था कि श्री कृष्णकी १६१०८ नारियाँ न थीं पर नाड़ियां थीं और योग राज होने के कारण उन्होंने इन पर संयम कर रक्खा था, इसलिये उन्हे इनका पतिकहा गया है। श्री प० सातवलेकरजी ने कुछ मास पूर्व पत्रों में लेख लिखा था जिसमें राधा कृष्ण सम्बंध तथा रासलीलादि का शुद्ध आध्यात्मिक बताते हुये श्री कृष्ण के १६१०८ स्त्रियों के साथ विवाह को अपहृत महिलाओं के उद्धार का उत्तम और अनुकरणीय आदर्श बताया था। ये बातें सुनने में अच्छी और प्रियलगती हैं और यदि पुराणोक्त चरित्र की सचमुच ऐसी आलंकारीक व्याख्या पौर्वा पर्य को देखने से होसकती तो हमें प्रसन्नता होती किन्तु निष्पक्षपात भाव से पुराणों का अनुशीलन करने पर यह स्पष्ट प्रतीत होता है कि ये व्याख्यायें असत्य और कल्पित हैं जो शास्त्रार्थादि के समय आक्षेपों से बचने के लिए गढ़ ली गई हैं। पुराणोंसे भी इनका समर्थन नहीं होता। उदाहरणार्थ हम भागवत दशम स्कंध के रासलीला प्रकरण के कुछ श्लोकों को आधुनिक काल के दो प्रसिद्ध पौराणिक पण्डितों की टीका सहित उद्धृत करते हैं। भागवत १०।२६।३५ का श्लोक है—

सिञ्चाङ्ग नस्त्वदधरामृत पूरकेण
हासावलोक कलगीत जह्रुच्छायाग्निम् ।
चेद् वयं विरहजाग्न्युपयुक्तदेहा
ध्यानेन याम पदयोः पदवीं सखेते !!

इसकी पं० गोविन्ददास विनीत काव्य कला भूषण साहित्य,भूषण काव्य मनीषी कृत(भागवत पुराणानुवाद श्याम काशी प्रेस मथुरा से प्रकाशित) टीका निम्न है— हे कृष्ण आपके हास्य दर्शन और मधुर गीत सेजो उनमें कामाग्नि उत्पन्न हुई है उसे आप अधरामृत रुपी पिचकारी से शान्त करिये, अथवा हे सखा हम कामाग्नि और विरहाग्नि दोनों से दग्ध शरीर होकर योगी पुरुषों की नाई आपके ध्यान द्वारा आप ही के चरणों के पास ही पहुँचेगीं । भागवत १०। २८ । ३८ श्लोक और उसकी पं० गोविन्ददासजी कृत टीका निम्न है:—

तन्नःप्रसिद वृजिनार्दनतेऽङ्घ्रि
घ्रिमूलंप्राप्ता विसृज्य
वसतीस्त्वदु पासनाशाः ॥
तत्सुन्दरस्मित निरीक्षणतीव्र
प्रकामत प्रात्मनां ॥
पुरुष भूषण देहि दास्यम् ॥

टीका हे दुख हरण हम पर आप कृपा कीजिये क्यों कि योगी जनों की भांति हम भी घर बार छोड़ कर आपकी सेवा की आशा से आपके चरण कमल में आई हैं हे पुरुष भूषण , आपके सुन्दर मन्द हास्य से उत्पन्न हुये तीव्रकामदेव से सन्तप्त हम गोपियों को दासी पद दीजिये । पृ०२६५ । इन्हीं श्लोकों की पं० रामतेज पाण्डेय साहित्यशास्त्री कृत— तथा पडित पुस्तकालय रेशम कटरा बनारस द्वारा प्रकाशित सामयिकी भाषा टीका निम्न है —हे प्यारे आपकी मन्द मुसकान भरी चितवन और आपके मनोहर गीत सेहमारे हृदय में प्रबल कामानल प्रज्वलित हो रहा है उसे अपने अधरामृत के प्रवाह से शान्त करिये नहीं तो आपके विरह से उत्पन्न अग्नि से हमारे शरीर भस्म हो जायेगे । "

भागवतदशम स्कन्ध टीका (पृ० ५८)
'अतएव हे दुःख दलन आप हम पर प्रसन्न हों हम आपकी सेवा करने की आशा से ही अपने घरों को छोड़ कर आपकी चरण शरण को प्राप्त हुई हैं । हे पुरुष भूषण आपकी सुन्दर मुसकान भरीचारु चितवन से हमारा चित्त अत्यन्त काम सन्तप्त हो रहा है आप हमें दासी बनाइये । पृ० ५६ ऐसे स्पष्ट वर्णन के होते हुये इस रास लीला को आध्यात्मिक सम्बन्ध बताना अपने को और जनता को धोखादेना नहीं तो क्या है ? संस्कृत की श्रीधरी टीका और वल्लभाचार्य कृत सुबोधिनी तथा उसके आधार पर निर्मित गिरिधरकृत टीका में भी इसी प्रकार के अर्थ किये गये हैं जिन्हें विद्वान देख सकते हैं । हम श्री सातवलेकर जैसे विद्वानों का ध्यान इन तथा निम्न - लिखित अन्य श्लोकों की ओर आकृष्ट करते हैं । रासलीला के निम्नवर्णनदेखिये:—बाहु प्रसारपरिरम्भ करालकोरुनवीस्तनालम्भन नर्मनखाग्र पातैः क्ष्वेलया वलोकहसितै व्रज सुन्दरी णामुत्तम्भयन् रति पती रमयाञ्चकार ॥ १० । २९ । ४६ । श्रीधरी टीका— रमण प्रकारमाह बाहुप्रसारेति दूरे स्थितानां ग्रहणार्थं बाहुप्रसारणं, परिरम्भः—बलादा—कृष्यालिङ्गनम्, करादीनाम् आलम्भन स्पर्शश्च (नर्माणि) परिहास वचनानि ....तैश्च वृजसुन्दरीणां (रतिपतिम्) कालम् (उत्तम्भयन्) उद्दीपयन (रमयाञ्चकार) ताः रमयामास ॥ वलभाचार्य कृत सुबोधिनी टीका में भी संस्कृत व्याख्याइसी प्रकार की है जिसका प्रारम्भ—— एव सर्व भावेन तासां (गोपीनां) स्मरक्षोभोत्पादितम् अतः परम अष्टविधालिङ्गनादि पूर्वक चेष्टिकादियुक्त रम विलास चरित्रमाह ।
............सयुक्तः कामोरतिपतिः—एवनाधिदैविकं कामम् उद्बाधयन् रमयांचकार गोपीनां सुखमेव प्रकटितवान् (पृ ० १५४)
इन श्लोकों का पं० गोविन्द दास साहित्य भूषण, काव्य मनीषी कृत हिन्दी अनुवाद देखिये—— ' भुजाओं का फैलाना, आलिंगन करना, हाथ, वेणी जाँघ, नीवी, स्तन इनका स्पर्श करना, हास्य के

वचन कहना, नखों के अग्रभाग चुभाना, क्रीड़ा करना: देखना और हंसना इन उपायों से ब्रज की स्त्रियों का कामोद्दीपन करते हुये भगवान् ने उनको रमण कराया। (पृ० २६३)

पं० रामतेज पाण्डेय साहित्य शास्त्री कृत हिन्दी टीका "हाथ फैलाना, आलिंगन करना, कर, अलक, जंघा, कटिवस्त्र के बंधन और स्तन आदिका स्पर्श करना, मजाक करना, नखक्षत करना, विनोद पूर्ण चितवन से ताकना और मन्द मन्द मुसकान आदि उपायों से ब्रजबालाओं का काम रसउद्दीप्त करते हुये भगवान् कृष्ण उन ब्रज बालिकाओं के साथ खेलने लगे।" (पृ० ५६) क्या यह सब आध्यात्मिक लीला है! बलिहारी है ऐसी आध्यात्मिकता पर। भागवत १०।३१।१४ का श्लोक और उसकी टीकायें भी देख लीजिये और तब निश्चय कीजिये कि यह कैसी लीला है जिसका आरोप श्री कृष्ण पर किया गया है? सुरत वर्धनं शोकनाशनं स्वरित वेणुना सुष्ठु चुम्बितम इतर राग विस्मारणं नृणां वितर वीरनस्तेऽधरामृतम्॥ श्रीधरी टीका— सुरत सम्भोग सुखम वर्धयतीति सुरत वर्धनम्।

पं० गोविन्ददास कृत भाषानुवाद —हे वीर! कामोद्दीपक, शोकहारी स्वर से भरी बाँसुरीसेचुम्बित चक्रवर्ती आदि सुखों को भुलाने वाला अपना अधरामृत हमें दीजिये। (पृ० २६८) पं०रामतेज पाण्डेय साहित्य शास्त्री कृत अनुवाद हे वीरकाम सुख को बढ़ाने वाला शोक को दूर करने वाला बजती हुई अपनी बाँसुरी से भली भांति चुम्बित और मनुष्यों की आसक्तियों को भुलाने वाला अपना मधुर अधरामृत हमें दान कीजिये। (पृ० ६२)

इस अप्रियप्रसंग को अधिक लिख कर हम भूमिका का कलेवर बढ़ाना नहीं चाहते किन्तु इतनेसे ही यह अत्यन्त स्पष्ट है कि रासलीला के समय श्री कृष्ण को ७ वर्ष का बालक बनाना, इस लीला को केवल विशुद्ध आध्यात्मिक प्रेमसम्बन्ध सूचक बताना इत्यादि सब कल्पित मन गढ़न्त बातें हैं। १६१०८ नारियों मानने वाली बात भागवत पुराण के 'आस्थि तस्य परं धर्मं कृष्णस्य गृहमेधिनाम आसन षोडश साहस्र महिष्यश्च रसाधिकम्।

तथा विष्णु पुराण के 'भगवतो ऽप्यत्र मर्त्ये लोके ऽवतीर्णस्य षोडशसहस्रम ष्टोतर शतं स्त्रीणाम भवन्। इत्यादि से कट जाती है जहाँ श्री कृष्ण की १६१०८ स्त्रियाँ बताई गई है और नारी शब्द का नहीं अपितु विष्णु पुराण में स्त्री और भागवत में महिषी (रानी)शब्द का प्रयोग हुआ है। यह उपर्युक्त वर्णन क्या नारियों के साथ आलिंगन चुम्बनादि लीलाओं का वर्णन हैं? इस रासलीला पञ्चाध्यायी की समाप्ति पर जो परीक्षित का प्रश्न और शुकदेवजी का उत्तर है उसको उद्धृत करके हम इस अप्रिय किन्तु आवश्यक प्रसंग को समाप्त करना चाहते हैं। परीक्षित् ने रासलीलाका वृत्तांन्त सुन कर शुकदेवजी से प्रश्न किया —

संस्थापनाय धर्मस्य प्रशमायेतरस्यच।
अवतीर्णो हि भगवानंशेन जगदीश्वरः॥ २७
कथं धर्म सेतूनां वक्ता कर्ताभिरक्षिता।
प्रतीपमाचरद् ब्रह्मन् परदाराभिमर्शनम॥२८
आप्त कामो यदुपतिः कृतवान वै जुगुप्सितम।
किमभिप्राय एतंनः संशयं छिन्धि सुव्रत॥ २९
— स्कन्द० १० ६० ३

इन श्लोकों काअनुवाद पं० रामतेज कृत निम्न है हे भगवान् जगत्पति भगवान् कृष्ण धर्म

स्थापना और अधर्म का उच्छेद करने के लिये ही अपने पूर्ण अँश से अवतीर्ण हुये थे। २७
तब फिर धर्म मर्यादा के वक्ता, रचियता और रक्षक होकर भी उन्होनें पर स्त्री गमन जैसा धर्म विरुद्ध काम किया ? २८
भगवान कृष्ण ने पूर्ण काम होकर भी इस प्रकार का निन्दनीय कार्य किया। इसका आशय मेरीसमझ में नहीं आया। हे सुव्रत, आप हमारा यह सन्देह निवृत्त कीजिये। २६ भागवत दशम स्कन्ध्यानुवाद
इस प्रश्न का उत्तर शुकदेवजी ने जो दिया उसका प्रारम्भ यों है:—

धर्म व्यतिक्रमो दृष्ट ईश्वराणांच साहसम्
तेजीयसां न दोषाय बह्वे सर्व भुजोयथा ॥ ३०

पं० रामतेज पाण्डेय कृत अनुवाद—
श्री शुकदेवजी ने कहा हे राजन् ईश्वर अर्थात समर्थ पुरुषों द्वारा धर्म का उल्लघन और हठ पूर्वक साहसिक कार्य होते देखे जाते हैं किन्तु उनसे उन तेजस्वियों को कोई दोष नहीं होता। जैसे सबका भक्षण करने वाला अग्नि उन पदार्थों के गुण दोष से दूषित नहीं होता। इत्यादि इस उत्तर से यह स्पष्ट है कि श्री शुकदेवजी रास लीलादि को आलंकारिक व आध्यात्मिक नहीं समझते थे अन्यथा वे स्पष्ट उत्तर दे सकते थे कि तुमने मेरा अभिप्राय ही नही समझा। यह तो आध्यात्मिक प्रेम का आलकारिक वर्णन है इत्यादि किन्तु ऐसा उत्तर न देकर उन्होंने कहा कि समर्थ पुरुष धर्म उल्लघन और हठ पूर्वक साहसिक कार्य करदेते है परन्तु

नेनत् समाचरेज्जातु मनसापि ह्यनीश्वरः

जो ईश्वर नहीं उन्हें मन से भी ऐसा नही करना चाहिये यह वचन श्रीकृष्णोक्त गीता के वचन से सर्वथा विरुद्ध है जिसमें कहा है कि

यद्यदा चरितश्रेष्ठ स्तत्तदेवेतरोजनः।
सयत्प्रमाणं कुरुतेलोकेस्तदनुवर्तते ॥

अर्थात् अच्छे आदमी जो करते हैं सामान्य पुरुष भी वैसा ही करते है अतः उनको सबके सम्मुख धर्म का आदर्श रखना चाहिये।

ब्रह्मवैवर्त के राधाकृष्ण सम्भोग विषयक १५ वें अध्याय के श्लोक अश्लील है किउनके अर्थसहित उद्धत करना हमे उचित प्रतीत नही होता तथापि २ ३ श्लोकों को बिना अर्थ लिखे नमूने के तौर पर दिया जाता है जिनमें राधा के लिये काम बाण पीड़ित और श्री कृष्ण के लिये काम शास्त्रवित शब्द का प्रयोग करते हुये आलिंगन चुम्बनादि अष्टविध श्रृंगार का विस्तृत वर्णन है—

साददर्श हरे र्वक्त्र चच्छाद व्रीडयामुखम।
पुलकाङ्कित सर्वांगी कामबाण प्रड़िता ॥ १३७
राधाचवित ताम्बूलं ययाचे मधुसूदनः। १४४
करे धृतवा चताकष्णः स्थापयानास वक्षसि।
चकार शिथिल वस्त्र चुम्बनंच चतुर्विधम ॥ १४६
प्रतयंगेनैव सतयमम अगेनाग समालिषम।
सगाराष्ट विध कष्णः चकार काम शास्त्रवित ॥ १४७
ब्रह्मवैवर्त पुराण अ: १५

क्या कोई भी विद्वान इस स्पष्ट ग्राम्यवर्णन को देखकर भी यह कहने का दुस्साहस कर सकता है कि पुराणों में वर्णित राधा कृष्ण प्रेम आध्यात्मिक है उसमें काम वासनाको कोई स्थान नहीं।

आर्य साहित्य मण्डल लिमिटेड, अजमेर के कुछ प्रमुख प्रकाशन ।

(१) चारों वेद सरल हिन्दी अनुवाद सहित:—सम्पूर्ण १४ जिल्दों में, मूल्य ११२ रु० उत्तम छपाई, सफेद चिकना कागज डबल क्राउन १६ पेजी के सुलभ आकार में,प्रत्येक जिल्द पूरे कपड़े की बँधी हुई सुनहरी अक्षरों सहित है,। सामवेद १ जिल्द ८) रु० यजुर्वेद २ जिल्द १६) रु० अथर्ववेद ४ जिल्द ३२) रु० ऋग्वेद ७) जिल्द ५६)रु०।

(२) महर्षि जीवन चरित:—श्री देवेन्द्रनाथजी द्वारा संग्रहीत व, प० घासीरामजी मेरठ द्वारा अनूदित, दोनों भाग सजिल्द व अनेकों घटना पूर्ण चित्रों से युक्त कवर पर महर्षि का तिरंगा चित्र आर्ट पेपर पर मूल्य ६)५० प्रतिभाग ।

(३)क्या वेद में इतिहास है ?:—ले० प० जयदेवजी शर्मा विद्यालंकार—युक्तिपूर्ण खोजपूर्ण प्रामाणिक ग्रंथ —मूल्य २॥)रु०

(४)श्री कृष्ण चरित:—श्री ले० भवानीलालजी भारतीय —महाभारत, गीता, उपनिषद्, पुराण तथा अन्य ग्रन्थों का मन्थन करके सिद्ध किया है कि श्री कृष्ण परम योगी, महान राजनीतिज्ञ, वेदशास्त्रों के विद्वान थे। मूल्य सवातीन रुपया ।

(५)कर्म मीमांसा :—ले० आचार्य वैद्यनाथजी शास्त्री पुस्तक में नीति के मूलतत्व आपद् धर्म, कर्तव्य और अधिकार, नीति और विधान, नीति आदि पर मौलिक तथा सारगर्भित सामग्री है, नवीन तथा संशोधित संस्करण मूल्य २।)

[६] वेदांग प्रकाश के शुद्ध संस्करण :—संधि विषय १)रु० आख्यातिक ४) रु० धातुपाठ ॥≈) वर्णोच्चारण शिक्षा ≈ नामिक ॥।) सौवर ।≈ पारिभाषिक ।।।] गणपाठ ॥≈] अव्ययार्थ ।),कारकीय ॥≈] सामासिक ॥≈) उणादिकोष आदि अन्य भाग भी छप रहे हैं।

[७] दयानन्द वाणी :—भूमिका लेखक पूज्य स्वामी ध्रुवानन्दजी महाराज:—पुस्तक में महर्षि के वचनों व उपदेशों का उत्तमोत्तम ढंग से संग्रहीत किया है टाइप बड़ा कवर दो रंगों का पृष्ठ संख्या २४० मूल्य केवल १॥) रुपया ।

[८] दयानन्द वचनामृत :—लेखक महात्मा आनन्द स्वामी सरस्वती:—सुललित भाषा में महर्षि के जीवन की अद्भुत झाँकी तथा उनके सुन्दर वचनों के संग्रह के साथ २ कवर पर सुन्दर तिरंगा चित्र मूल्य ६ आना ।

(९)भारत वर्षीय आर्य विद्या परिषद् की विद्या रत्न, विद्या विशारद, विद्यावाचस्पति आदि परीक्षायें मण्डल के तत्वावधान में प्रति वर्ष होती हैं, इन परीक्षाओं की समस्त पुस्तकें अन्य पुस्तक विक्रेताओं के अतिरिक्त हमारे यहां से भी मिलती हैं।

वेद व अन्य आर्ष ग्रंन्थो का सूचीपत्र तथा परीक्षाओं की पाठ विधि मुफ्त मगावें ।

शेष पृ० ६ का

कि १६ हजार शरीरकी नस—नाड़ियोंकोयोग के द्वारा वश किए थे।

उस समय पं० सातवलेकरजी ने मेरे विचार कोई टीका-टिप्पणी नहीं की थी। और सन् १६५२ में 'आर्यमित्र' में उन्होंने १६ हजार नारियों से कृष्ण का विवाह करवा दिया।

'चरित्रविश्लेषण' में लेखक ने श्री कृष्णजी सन्ध्या हवन करने का वर्णन महाभारत के आधार किया है जो उचित ही है।

लेखककी शेष सभी बातों से मैं सहमत हूं। एक त की उल्लेख करना लेखक महोदय भूल गए हैं कि ष्णजी वेद मंत्रों के प्रचारक तथा ऋषि थे। आशा है आगामी सम्स्करण में जोड़ देंगे।

मासिक पत्र "कल्याण" पौराणिकोंका मासिक है जो गोरखपुर से प्रकाशित होता है। उसके "श्री कृष्ण' अंकवर्ष ६, अगस्त सन् १६३१ ई०, सख्या १, पृष्ठ ३५६. में यह स्पष्ट लिखा हुआ है—

'श्री कृष्ण ऋग्वेद के आठवें मण्डल के ८५-८७ और दशवें मण्डल के ४२-४३ सूक्तों के ऋषि थे।

पं० परशुराम चतुर्वेदी ने स्पष्ट लिखा है—भीष्म का कहना था कि श्री कृष्ण का सब से अधिक सम्मानित करने के दो कारणों में से एक यहभी है कि वे वेदों तथा वेदाङ्गों के जानकार हैं और उन्होंने ऋत्विज होकर यज्ञ भी कराया है। ※ १

—शिवपूजनसिंह 'पथिक'

※ महाभारत, सभापर्व ६८ वाँ अध्याय।

१ "वैष्णव धर्म" पृष्ठ ३३ सन १६५३ ई०, में विवेक प्रकाशन इलाहाबाद से प्रकाशित प्रथम संस्करण साहित्य भवन लिमिटेड इलाहाबाद से प्राप्य।

क्षमा याचना

जून मास में राजस्थान आर्य वीर दल के शिक्षण शिविर में व्यस्त रहने और प्रेस की अव्यवस्था के कारण हम आर्षपथ का जून, जुलाई और अगस्त का संयुक्त अंक प्रकाशित कर रहे हैं। इन अंकों की क्षतिपूर्ति करने का प्रयत्न कर सकेंगे ऐसी हमें आशा है।

व्यवस्थापक

साहित्य समालोचना

श्री कृष्ण चरित—ले० श्री० पं० भवानीलाल भारतीय। प्रकाशक आर्य साहित्य मण्डल अजमेर। मुल्य ३ रु० २५न० पै०

योगिराज कृष्ण के सम्बन्ध में राय बांकुमचन्द्र चट्टोपाध्याय की कृष्णचरित्र और पं०चमूपतिजी एम० ए० की "योगेश्वर कृष्ण" ये दो पुस्तकें अच्छी लिखी हुई हैं। इनके पढ़ने से कृष्णजी के विषय में बहुत सी बात ज्ञात होती हैं।

अभी प भवानीलाल जी भारतीय एम. ए ने "श्री कृष्ण चरित" नामक २६१ पृष्ठ की एक पुस्तक लिखी है जिसकी भूमिका आर्य जगत् के प्रतिष्ठित विद्वान् प० धर्मदेवजी विद्यामार्तण्ड ने लिखी है। यह मार्च सन् १९५८ में प्रथमबार आर्य साहित्य मण्डल लिमिटड, अजमेर से प्रकाशित हुई है। एक प्रति का मूल्य ३ रु ० २५ न० पै ० है। छपाई आदि सुन्दर है। यह पुस्तक कैसी है उसका नीर क्षीर विवेक करना है। लेखक आर्य समाजी विचार धारा के हैं इसलिये इसमे पौराणिकता और कल्पना का सर्वथा ही अभाव है। कृष्ण चरित्र पर जो भी लाञ्छन पुराणकार ने लगाया है उनकी भलीभांति आलोचना लेखक ने की है। कृष्ण चरित्र की विकृति में लेखकने यजु ० ४०। ८ के मंत्र द्वारा यह सिद्ध किया है कि ईश्वर का अवतार नहीं होता है। वास्तव में यह युक्ति युक्त है इस मंत्र पर महर्षि दयानन्दजी, आद्य श्री शंकराचार्यजी महीधराचार्य प्रभृति ने लगभग एकसा अर्थ किया है

ऋ ४ ७ १ कृष्ण एम रुशत.........

अथर्व ८। ५। ६ मन्त्र से कृष्ण अवतार की कल्पना पौराणिकों ने की है उसकी समीक्षा इस प्रकरण में अवश्य करनी चाहिए थी।

कृष्णकी ऐतिहासिकता में लेखक ने उन धारणाओं का खण्डन किया है कि श्री कृष्ण कोई ऐतिहासिक पुरुष नहीं हुए। वास्तव में इस प्रकार की कल्पना पाश्चात्य मस्तिष्कों की विकृती है।

कृष्ण चरित्र के मौलिक उपादान में लेखक ने महाभारत के प्रक्षेपों का विवेचन किया है। चार वेद संहिताओं को छोड़कर सभी ग्रन्थों में क्षेपक मिलेंगे जो धूर्तों ने मिश्रण किए हैं।

क्यापुराण विश्वसनीय हैं? में लेखक ने वेदव्यास के नाम से बने हुए कल्पित १८ पुराणों की निःसारता प्रकट की है जो उचित है ब्राह्मण ग्रन्थ ही वास्तव में पुराण हैं। ५० माधवाचार्य शास्त्री ने पुराण दिग्दर्शन नामक ग्रन्थ लिखकर पुराणों की अश्लील कथाओं को भी वेदों के सिरपर थोपने का प्रयास किया है, श्री कालूराम शास्त्री ने भी पुराण धर्म, में पुराणों की दोहाई दीहै। यदि पौराणिक पण्डित पुराणों की उपेक्षा करेंगे तो उनका पेट कैसे चलेगा। १८ पुराण साम्प्रदायिकों के लिखे हुए हैं।

वंश परम्परा में श्रीकृष्णको यदुवंशी [चन्द्रवंशी] में दिखलाया है जो उचित है। यादव, अहीर, गोप, ग्वाल, जाट, गूजर प्रभृति एक ही श्रेणी के ज्ञात होते हैं। कृष्णजी का गोपों से अधिक सम्बन्ध था नन्दजी को भी गोप ही कहा गया है।

ययाति, नहुष,यदु,तुर्वसु नामों को वेदों में दिखलाना भ्रमपूर्ण है। यह विदेशियों की कल्पना है। लेखकनेइस मत का खण्डन करते हुए वेदों केसभी शब्दों का यौगिकलिखा है जो उचित है।

'बाल्यकाल की घटनायें में पूतनावध, शकटभञ्जन तृणावर्त,यमलार्जुन, दूध, दही का चुराना, आदिघट नाओं परलेखकने युक्तियुक्त विचार किया है। मक्खन् चुराने के बारे में लेखक लिखते है बाल्य अवस्था में मक्खन आदि की चोरी की थी उसे नैतिक दृष्टि से अनुचित नहीं ठराया जासकता'। लेखकके विचार से मैं सहमत हूँ। मनुस्मृति के 'अज्ञोभवतिवैबाल": के अनुसार यह उचित है।

वृन्दावन गमनशीर्षक में लेखकने 'कालयवन की घटनाको महाभारत में न आने के कारण टीका टिप्पणी विशेष नहीं की है। पं० चमूपतिजीने इस पर विचार नहीं किया है,बंकिम बाबू के विचारोंकी आपने आलोचना की है।

मेरेविचार से कालियनामक व्यक्ति नाग जाति का था। नाग सर्प नहीं वरन् एक जाति थी जिनकी कन्याओं से आर्य राजाओं ने विवाह किए थे जैसे अर्जुन, तथा श्री राम पुत्र कुश। कालिय यमुना के किनारे रहता था और उप द्रवकरता था उसे कृष्ण जी नेमारा था उस घटनाको उनकी अलौकिकता प्रगटकरने के लिए पुराणकार ने नाग—साप की कल्पना करली है।

अँगुली पर गोवर्द्धन धारण पर लेखक का विचार युक्ति युक्त हैं। वर्षाहोने पर गोवर्द्धनपर्वत की गुफाओं आदि में शरणली यह ठीक है। आपने पं० अयोध्या सिंह उपाध्याय हरिऔधकी कविता का प्रमाणभी दिया है।

श्री द्वारका प्रसाद मिश्रने "कृष्णायन"नामक काव्य ग्रन्थ में भी ऐसा ही विचार प्रगट किया है।

गोपी प्रसंग में लेखक का विचार उचित है। पुराणों में गोपियों के साथ कृष्ण की रासलीला आदि का वर्णन उचित नहीं वरन कलङ्क है।

राधा शीर्षक में लेखक का विचार ठीक है कि वह कृष्ण की धर्म पत्नी न थी। पुराण कारोंने कलङ्क लगाया है। पुराणों में कहीं राधा का कृष्णके वामपार्श्व से उत्पत्ति ,कहीं वृषभानु की कन्या, कहीं रायाण की स्त्री कहा है।

"बहु विवाह का आरोप और उसकी असत्य ता" में १६००० रानियों से विवाह की घटनाओं की उचित समालोचना करते हुऐ पं० श्रीपाद दामोदर सातवलेकरजी के मत का भीउन्होंने खण्डन किया है पं० सातवलेकरजी का यह सिद्धान्त तर्क हीन तथा प्रमाण शून्य है कि उन्होंने १६००० स्त्रियों से विवाह किया।

मेरे विचार से श्री कृष्णकीस्त्री केवल रुक्मिणी ही थी। वे योगिराज थेऔर शरीर की १६ हजार नस नाड़ियों को योगबल द्वारा वश किए थे।

मैंनेस्वयं योगिराज श्री कृष्ण के जीवन पर एक दृष्टि शीर्षक लेख जो वैदिकधर्म मासिक पत्र फर वरी १६४८ ई में पं० सातवलेकरजी के ही सम्पादन— के पृष्ठ ४२ में यह सिद्ध किया था

[शेष पृ० ६२ व पर]

प्रकाशक चांदमल आर्य मुद्रक -- प्रभा प्रेस , जोधपुर



निन्दन्तु नीति निपुणा यदि वा स्तुवन्तु लक्ष्मी: समाविशतु गच्छतु वा यथेष्टम् ।
अद्यैव वा मरणमस्तु युगान्तरे वा न्याय्यात्पथ: प्रविचलन्ति पदं न धीरा: ॥ भर्तृहरि

वर्ष १

अंक ३

परामर्श मण्डल—

[१] पं० धर्मदेव विद्या वाचस्पति, विद्यामार्तण्ड गुरुकुल, कांगड़ी ।

[२] पं० भवानी लाल 'भारतीय' एम. ए. सिद्धान्त वाचस्पति, सदस्य, सार्वदेशिक आर्य प्रतिनिधि सभा दिल्ली ।

[३] पं० शिव पूजनसिंह कुशवाहा 'पथिक' सिद्धान्त वाचस्पति कानपुर ।

संरक्षक—
राव्रतसिंह चौहान

सम्पादक—
चांदमल आर्य

प्रबन्ध सम्पादक—
विश्वम्भरदयाल एम.ए. सिद्धान्त वाचस्पति

व्यवस्थापक—
घीसूलाल आर्य

वेदसुधा

यो जात एव प्रथमो मनस्वान्देवो देवान्क्रतुना पर्यभूषत् ।
यस्य शुष्माद्रोदसी अभ्यसेतां नृम्णस्य मह्ना स जनास स इन्द्र: ॥
ऋग्वेद २ । १२ । १

व्याख्या — ऐश्वर्य शाली इन्द्र परमात्मा कैसा है ? यह वह प्रश्न है जिसकी जिज्ञासा अनादि काल से मनुष्य को रही है । ऋग्वेद के इस मन्त्र के द्रष्टा ऋषि गृत्समद कहते हैं कि हे मनुष्यों, (जनास) जो प्रारम्भ से ही (य: जात: एव) प्रथम मनस्वी, धीमान (प्रथम: मनस्वान) था और जो अपने महान् पराक्रम रूप कर्म से (क्रतुना) देवताओं में सर्वश्रेष्ठ बना (पर्यभूषत्) । जिसके महान बल और पराक्रम से (यस्य शुष्मात) यह समस्त द्यावा पृथ्वी और (रोदसी) सम्पूर्ण लोक लोकान्तर कांपते है (अभ्यसेताम्) वह प्रभु इन्द्र अपने ऐश्वर्य (नृम्णस्य) के बल से (मह्ना) अपने सर्वोपरि पद पर प्रतिष्ठित है । (स: इन्द्र) इन्हीं विशिष्ट गुणों से युक्त देव इन्द्र हमारा आराध्य और पूज्य है ।

बैशाख सं० २०१६ वि०
श्रीमद्दयानन्दाब्द १३४
मई १९५९ ई०

आर्यपथ कार्यालय
आर्य समाज रातानाडा
जोधपुर (राजस्थान)

वार्षिक मूल्य ३ रूपये
एक प्रति २५ न० पै०

आर्यपथ के नियम—

(१) आर्यपथ प्राचीन वैदिक विचारधारा का प्रचारक और आर्य ऋषियों द्वारा प्रचारित संस्कृति के पुनरुत्थान का पक्षपाती मासिक पत्र है।

(२) यह पत्र प्रतिमास १५ वीं तिथि को प्रकाशित होता है। यदि दिनांक २५ तक न पहुँचे तो तत्काल सूचना देने पर दूसरी प्रति भेजी जा सकती है।

(३) वार्षिक मूल्य ३) रु० धनादेश [मनी आर्डर] द्वारा अग्रिम भेजना चाहिये। वी० पी० मंगवाने में ग्राहक को ५० न० पै० अधिक देने पड़ते हैं।

(४) आर्यपथ का नया वर्ष मार्च [फाल्गुन] से होता है। वर्ष का प्रथम अंक विशेषांक होता है।

(५) आर्यपथ के ग्राहक किसी भी मास से बन सकते हैं।

(६) प्रकाशनार्थ लेख और रचनायें सम्पादक आर्यपथ, आर्यसमाज, रातानाडा, जोधपुर के पते से आने चाहियें। लेख सरल, संक्षिप्त, सारगर्भित और मौलिक हों। सैद्धान्तिक और आर्यसमाज की जीवन्त समस्याओं के सम्बन्ध में आलोचनात्मक और विवेचनात्मक लेखों को प्राथमिकता दी जायेगी लेख स्पष्ट और शुद्ध हों, तथा कागज के एक ओर लिखे हों। उनका प्रकाशित करना या न करना अथवा संशोधित करना सम्पादक के आधीन होगा। अन्यत्र प्रकाशित रचनाओं को स्थान नहीं दिया जायेगा। डाक व्यय प्राप्त होने पर अस्वीकृत रचनायें लौटाई जा सकेंगी।

(७) विज्ञापन के लिये अग्रिम धन का आना आवश्यक है। सम्पूर्ण पृष्ठ के १०) रु० और आधे पृष्ठ के ५) रु०। अश्लील और गर्हित रुचि के विज्ञापन नहीं छापे जायेंगे।

(८) पत्र व्यवहार के समय ग्राहक संख्या अवश्य लिखें।

(९) पत्र की सामग्री और उसके बाह्य प्रसाधन के सम्बन्ध में पाठकों से सुझाव भेजने की प्रार्थना की जाती है।

(१०) पत्र का नमूना निःशुल्क भेजा जाता है।



श्री विद्यानन्द विदेह और आर्यसमाज में अनुशासन की समस्या

हमारे पाठकों को यह विदित ही होगा कि सार्वदेशिक सभा ने श्री विद्यानन्द विदेह के लिये आर्यसमाज की वेदी बंद करदी है। श्री विद्यानन्द विदेह ने अभी हाल ही में एक विस्तृत वक्तव्य 'अपनों से अपनी बात' शीर्षक प्रकाशित करा कर समस्त आर्यसमाजों को भेजा है। इसका अधिकृत उत्तर जहाँ तक हमें ज्ञात है अभी तक सार्वदेशिक सभा द्वारा नहीं दिया गया, यद्यपि 'सार्वदेशिक' की एक सम्पादकीय टिप्पणी में विदेह जी के उक्त वक्तव्य की आलोचना की गई है। हम उस दिन की प्रतीक्षा में हैं जब कि हमारी शिरोमणि सभा के पदाधिकारी इस वक्तव्य पर अपना निर्णयात्मक मत व्यक्त करेंगे। अस्तु।

विदेह जी के इस वक्तव्य से कई बातें सामने आती हैं। उन्होंने कुछ व्यक्तियों पर यह आरोप लगाया है कि वे उनकी प्रगति और बढती हुई लोकप्रियता को सहन नहीं कर सके, उन्होंने विदेह जी के विरुद्ध वातावरण तैयार किया और ऐसी परिस्थितियाँ उत्पन्न कर दी, जिसके परिणाम स्वरूप सार्वदेशिक सभा को उनके लिये आर्यसमाज की वेदी बंद करनी पड़ी। विदेह जी के इस कथन में कितनी सत्यता है, हम नहीं कह सकते। परन्तु यह भी निश्चित है कि विदेह जी स्वयं पथ भ्रष्ट हो। हे थे अथवा हो गये थे। धर्मार्य सभा के समक्ष अपनी भूलों को स्वीकार करना यह सिद्ध करता है कि उनके विरुद्ध लगाये गये आरोपों में पर्याप्त सत्यता थी। उन्होंने सार्वदेशिक सभा को यह विश्वास भी दिलाया कि वे अपने ग्रन्थों में आवश्यक संशोधन कर देंगे और जब तक यह नहीं होगा, उनके ग्रन्थों का वितरण बंद रक्खा जायगा।

विदेहजी ने अपने वचन का पालन नहीं किया। धर्मार्यसभा के समक्ष अपनी भूलों को स्वीकार करने के तुरन्त बाद ही वे अफ्रीका चले गये और वहाँ उन्होंने वेद भाष्य के नाम पर पर्याप्त धन संग्रह किया। जब सार्वदेशिक सभा ने उनके लिये समाज की वेदी बंद कर दी तब तो उनमें प्रतिशोधाग्नि तीव्रता से धधक उठी और उनका यथार्थ स्वरूप लोगों के समक्ष आ गया। विदेहजी का अहं बहुत प्रबल है। वे अपने मुंह से ऋषि दयानन्द का चाहे कितना ही गुणगान क्यों न करें, अपने वेद व्याख्या ग्रन्थों में ऋषि का उल्लेख न करना उनकी नकली ऋषि भक्ति का पर्दाफाश कर देता है और आर्यसमाज के प्रवर्तक के प्रति उनकी घोर कृतघ्नता का सूचक है। आर्य समाज से बहिष्कृत होने के पश्चात् विदेह जी ने अपने मासिक पत्र 'सविता' ये प्रत्यक्ष या परोक्ष रूप में आर्यसमाज के सम्बन्ध में जो कुछ लिखा, उसमे आर्यसमाज के विरोधियों के ही हाथ मजबूत हो सकते हैं।

इधर अपना वक्तव्य प्रकाशित कराने के पश्चात् उनका रुख कुछ बदला हुआ अवश्य प्रतीत होता है।

[स] यह तो नहीं कह सकते कि इस दुर्भाग्य पूर्ण परिस्थिति का अन्त कब और किस प्रकार होगा क्यों कि इसमें विदेहजी और आर्यसमाज में कुछ मौलिक मतभेद दृष्टिगोचर हो रहा है, परन्तु यहाँ प्रसंगवश हम आर्यसमाज में अनुशासन की समस्या पर कुछ महत्व पूर्ण बाते लिख देना भी आवश्यक समझते है।

विदेहजी के आर्यसमाज से बहिष्कृत कर दिये जाने के पश्चात् भी आर्यसमाजों ने उन्हें अपने यहाँ आमंत्रित किया, उनकी कथाये करवाई और उनको सम्मान दिया। उनके वेदसंस्थान द्वारा संचालित साधना शिविरों में आर्यसमाज के चोटी के नेताओं और विद्वानों ने भाग लिया और सहयोग दिया। फिर उनके लिये आर्यसमाज की वेदी बंद कर देने का क्या अर्थ है? सार्वदेशिक सभा की नाक के नीचे ही दिल्ली की समाजे विदेहजी को बुलाती हैं और उनका प्रचार करवाती हैं। फिर अनुशासनात्मक कार्यवाही कहाँ गई? क्या सार्वदेशिक सभा इन तथ्यों से अनभिज्ञ है? यदि वह जानती है कि उसके निर्णय के उपरान्त भी उसकी आज्ञा की अवहेलना हो रही है तो ऐसा करने वाली आर्यसमाजों पर सभा ने अनुशासनात्मक कार्यवाही क्यों नही की? सभा निश्चयही अनुशासन का पालन करवाने में असफल रही।

स्पष्ट बात तो यह है कि आज आर्यसमाज में अनुशासन नाम की कोई वस्तु शेष ही नही रह गई है। और अनुशासन का पालन हो भी कैसे? समाज का संचालन ऐसे लोगों के हाथों में चला गया है जो स्वयं सिद्धान्त हीन, अवसरवादी अर्थ के दास और समाज के गौरव और परम्पराओं से अनभिज्ञ हैं। नीतिकार के शब्दों में अपूज्यों की पूजा और पूज्यों का तिरस्कार जहाँ होगा वहाँ दुर्भिक्ष, मरण और भय के अतिरिक्त और क्या फल हो सकता है? आर्यसमाज भी आज श्रेष्ठ विद्वानों और कर्मठ सभासदों के अभाव में दुर्भिक्षग्रस्त है, उसके संगठनात्मक विघटन की कल्पना भी की जा सकती है और वह अन्यान्य शक्तियों से भयाक्रान्त तो निश्चय ही है।

जब अनुशासन का पालन ही नहो तो व्यर्थ के घटाटोप से क्या लाभ? सहयोगी 'सार्वदेशिक' ने अपनी टिप्पणी में लिखा कि विदेहजी आज भी बिजली से अन्त्येष्टिकराने में विश्वास रखते हैं। फिर उन्हें आर्यसमाज में कैसे लिया जा सकता है? हमारा निवेदन है कि ऐसी छोटी छोटी बातों में मतभेद का विचार किया जाय तब तो आर्यसमाज के किन्हीं दो विद्वानों की परस्पर मेल की पटरी नहीं बैठेगी। उस परिस्थिति में सार्वदेशिक सभा किस किस विद्वान के लिये आर्यसमाज की वेदी बंद करेगी? सत्य तो यह है कि या तो कोई ऐसी कार्यवाही की हीन जाय जिससे आर्यसमाज की शक्ति का ह्रास हो और हम अपने मित्रों और शुभ चिन्तकों को अपनाविरोधी बना बैठे। यदि अनुशासनात्मक कार्यवाही करनी ही पड़े तो उसका दृढ़ता से पालन किया जाय, और उसमें शिथिलता दिखाने वाले को कड़ा दण्ड दिया जाय।

आर्यसमाज ने अपने विगत जीवन काल में ऐसे अनेक विद्वानों को खोया है जिन्हें तनिक सा मतभेद हो जाने के कारण ही हमने पृथक कर दिया। माना कि इटावा वाले भीमसेन शर्मा और अखिलानन्द स्वार्थवश आर्यसमाज के विरोधी बने परन्तु क्या पं० विश्वबंधु शास्त्री जैसे त्यागी और मनस्वी विद्वानों को खोकर हमने अपनी हानि नहीं की? यह सत्य है कि सैद्धान्तिक बातों में समझौता नहीं किया जा सकता, परन्तु क्या आज भी हम ऐसे विद्वानों की प्रतिष्ठा नहीं करते और उन्हें प्रश्रय नहीं देते जिनके विचार स्पष्ट ही आर्यसमाज के सैद्धान्तिक दृष्टि कोण से

भिन्न हैं। एक ही उदाहरण देना पर्याप्त होगा। बनारस संस्कृत कालेज के भूतपूर्व प्रिन्सिपल डा० मंगलदेव शास्त्री आर्यसमाजस्थ गुरुकुलों के उत्सवों पर आयोजित होने वाले सम्मेलनों के अध्यक्ष पद को सुशोभित करते रहते हैं परन्तु जिन पाठकों ने उनके द्वारा लिखी पुस्तक 'भारतीय संस्कृति का विकास: वैदिक धारा' पढ़ी है वे जानते हैं कि वेदों के विषय में शास्त्रीजी के कैसेविचार हैं और आर्यसमाज के दृष्टिकोण से उनका कितना मतभेद है। केवल मतभेद की ही बात नहीं, डा० मंगलदेवजी के विचारानुसार तो आर्यसमाज का वेद के प्रति समग्र दृष्टिकोण ही पूर्वाग्रह युक्त, साम्प्रदायिक और रूढ़िग्रस्त है। ऐसे विचार रखने वाला व्यक्ति भी यदि हमारे द्वारा सम्मान का पात्र हो सकता है तो क्या विदेहजी के विषय में हम अपने निर्णय पर पुनः विचार नहीं कर सकते।

हमारे कथन का यह अभिप्राय नहीं कि सार्वदेशिक सभा विदेहजी के अपराधों के प्रति उपेक्षा दिखलाये और उनकी अहंवादिता तथा उनकी सिद्धान्त विरुद्ध मान्यताओं और क्रियाओं को क्षमा कर दे। निवेदन इतना ही है कि हम यह देखें कि हम जिस अनुशासनात्मक कार्यवाही की घोषणा करते हैं उसका सम्पूर्ण रीत्या पालन भी होता है या नहीं और किसी साधारण मतभेद की आड़ में हम किसी अच्छे व्यक्ति को केवल खो ही नहीं रहे हैं अपितु उसे अपना विरोधी तो नहीं बना रहे हैं?

टिप्पणियाँ—

दलाई लामा की भोजन सूची—

तिब्बतीय बौद्धों के धर्म गुरू और 'जीवित बुद्ध' के प्रतिष्ठा पूर्ण पद पर आसीन दलाई लामा की भोजन सूची जब हमने समाचार पत्रों में पढ़ी, तो उससे आश्चर्य तो कुछ विशेष नहीं हुआ क्योंकि यह तो एक सर्वविदित बात है कि आज के बौद्ध धर्मावलम्बी वे चाहे स्वदेशी हों या विदेशी - घोर मांसाहारी हैं अतः यदि दलाईलामा के भोजन में मांस, मछली अन्डे और मुर्गे का समावेश हो तो आश्चर्य ही क्या? परन्तु फिर भी हम कुछ सोचने के लिये अवश्य विवश हो जाते हैं महात्मा बुद्ध आजीवन अहिंसा, भूतदया और प्राणिमात्र के प्रति मैत्री पूर्ण व्यवहार का उपदेश देते रहे। यद्यपि बौद्ध धर्म में मांसाहार का कोई आग्रह पूर्ण निषेध नहीं है और बुद्ध के जीवनी लेखक तो स्वयं बुद्ध की मृत्यु का कारण भी उनकाशूकर मांस का भक्षण ही मानते हैं। फिर भी इतना तो निश्चय है कि अहिंसा को महत्व देने वाले व्यक्तियों का मांसाहारी होना उनकी कथनी और करनी में महद् अन्तर उपस्थित करता है। यह एक सर्वविदित तथ्य है कि बुद्ध तत्कालीन वैदिक यज्ञ प्रणाली के विरोधी केवल इसलिये बने कि उन यज्ञों में प्राणियों की हिंसा होती थी। इस प्राणि हिंसा का कारण थी पुरोहित वर्ग की जिव्हा लोलुपता जिसके वशवर्ती होकर वे यज्ञों में पशुओं को मारते और अपनी रसना को तृप्त करते थे। और यह भी सत्य है कि बुद्ध ने इस रसना लोलुप पुरोहित वर्ग और उनके हिंसा रंजित कर्मकाण्ड के विरुद्ध आवाज उठाई। तो क्या यह सोचना उचित और तर्क पूर्ण नहीं होगा कि यदि बुद्ध मांस लोलुप पुरोहितों के विरुद्ध विद्रोह का झण्डा उठाते हैं तो मांस भक्षण में निश्चय ही उनकी सम्मति नहीं है। अशोक आदि राजाओं का पशु पक्षियों की रक्षा करना और उनके लिये चिकित्सालय खुलवाना इतिहास सिद्ध तथ्य है ऐसीस्थिति में बौद्धों का मांसाहार उनके प्रवर्तक और

हमारी विचारधारा:-

हमारे साप्ताहिक अधिवेशन

लेखक— श्री पं० भवानीलाल 'भारतीय' एम ए.

सामूहिक उपासना (Congregational Worship) जिस रूप में आज हमारे समाज में प्रचलित है, प्राचीन काल में भी वह उसी रूप में प्रचलित रही होगी, यह निश्चयात्मक रूप से नहीं कहा जा सकता। निश्चय ही वैदिक धर्मावलम्बी यदाकदा सम्मिलित रूप से यज्ञादि के बृहद् आयोजनों द्वारा राष्ट्र और समाज में सामूहिक चेतना का संचार करते रहते थे। उपनिषदों में राजर्षि जनक द्वारा आयोजित यज्ञों और बृहद् आध्यात्मिक समारम्भों का विस्तार पूर्वक उल्लेख मिलता है जिनमें सहस्त्रों की संख्या में तत्ववेत्ता ऋषि, महर्षि एकत्रित होकर ब्रह्म विद्या विषयक वार्तालाप करते थे। नैमिषारण्य में अट्ठासी हजार ऋषियों द्वारा सम्मिलित रूप से पुरातन आख्यानों को सुनने की कथा भी इसी ओर संकेत करती है।

परन्तु उन्नीसवीं शताब्दी में हमारे देश ने जिस महान धार्मिक पुनरुत्थान के आन्दोलन को देखा, उसमें कुछ पाश्चात्य प्रभाव भी दृष्टिगोचर हो रहा था। आर्यसमाज का पूर्ववर्ती ब्रह्मसमाज ईसाइयत के अनुकरण पर प्रत्येक शनिवार को सांयकाल ७ से ६ बजे तक अपने साप्ताहिक अधिवेशन लगाता था जिसमें वेदपाठ, वेद व्याख्या के अतिरिक्त आध्यात्मिक प्रवचन और भजन आदि कार्यक्रम भी होते थे। आर्यसमाज के अधिवेशनों में भी यही परिपाटी अपनाई गई जो आजतक किसी न किसी प्रकार चल रही है।

आर्यसमाज के साप्ताहिक सत्संगों को विधिवत चलाने के लिये आर्य जगत की शिरोमणि सभा - सार्वदेशिक आर्य प्रतिनिधि सभा ने एक पद्धति का निर्माण किया है। आर्यसमाजों से यह आशा की जाती है कि वे इस पद्धति का पालन करें और ऐसी चेष्टा करें जिससे कि इन साप्ताहिक अधिवेशनों को अधिकाधिक लोकप्रिय, रोचक और उपयोगी बनाया जा सके। परन्तु बहुधा यह देखा गया है कि इन सत्संगों का जितना लाभ आर्यसमाज को मिलना चाहिये उतना मिल नहीं पाता। अधिकांश मे यह कार्यक्रम एक रूढ़िबद्ध प्रणाली पर चलता रहता है।

साधारणतः आर्यसमाजों के साप्ताहिक अधिवेशनों में सामूहिक संध्या, हवन, भजन, कथा, प्रवचन और समाचार सूचनायें आदि के कार्यक्रम रहते हैं। अधिवेशन का कोई समय नियत नहीं रहता। कहीं कार्यक्रम विलम्ब से प्रारम्भ होता है, और कहीं जल्दी कई समाजों में रविवार की सायंकाल को अधिवेशन लगते देखे गये हैं। साप्ताहिक अधिवेशनों में सामूहिक संध्या और हवन प्रायः उपेक्षित से रहते हैं। साधारणतः यह समझा जाता है कि अधिवेशन के आरम्भ में किये जाने वाले यज्ञ का जिम्मा समाज के मंत्री व कुछ यज्ञ प्रेमी, कर्मकाण्डी महानुभावों का है जो सत्संग में ठीक समय पर उपस्थित हो जाते हैं। अन्य सदस्य तो अपनी वैयक्तिक रुचि और सुविधा के अनुसार आते हैं। आर्यसमाजों के अधिवेशनों में किये जाने वाले यज्ञों की प्रणाली में सर्वत्र एकता का अभाव दृष्टिगोचर होता है। हम आर्यसमाज के कर्मकाण्ड में प्रचलित असंगतियों और असमानताओं पर अपनी

विचारधारा के अन्तर्गत अन्य किसी अंक में प्रकाश डालेंगे . परन्तु यहां इतना लिख देना ही पर्याप्त है कि साप्ताहिक सत्संगों में किये जाने वाले यज्ञों की विधि को एक सूत्र में पिरोकर उसे सर्वत्र समान भाव से प्रचलित करने के निश्चित आदेश देना सार्वदेशिक धर्मार्य सभा का प्रमुख कर्तव्य हो जाता है।

यज्ञ के पश्चात् कुछ सामूहिक भजन बोलने की परिपाटी है। संगीत मानव हृदय को आकृष्ट करने का एक प्रमुख साधन है, परन्तु खेद है कि आर्यसमाज ने संगीत की ओर बहुत कम ध्यान दिया। तभी तो अक्सर यह फब्ती सुनने में आती है कि आर्यसमाजी भजनीकों ने संगीत की हत्या कर दी है। साप्ताहिक अधिवेशन में यद्यपि ईश्वर भक्ति के ही भजन बोलने चाहिये, परन्तु कितना ऐसा विषय शेष रह जाता है जिस पर आर्यसमाजी गायक अपने उद्गार प्रकट नहीं करते। भजनों के पश्चात् कथा और प्रवचन की बारी आती है। अक्सर ऋषि दयानन्द कृत सत्यार्थ प्रकाश तथा अन्यान्य वैदिक, आर्ष ग्रन्थों को कथा करने के लिये चुना जाता है, परन्तु जिस व्यक्ति पर कथा का भार होता है वह प्रायः अपने विषय का पंडित नहीं होता और न विषय की तैयारी करने का कष्ट ही उठाता है। परिणाम यह होता है कि वह कथा के प्रति श्रोताओं की रुचि उत्पन्न करने में असफल हो जाता है।

कथा के पश्चात् उपदेश और प्रवचन होने चाहिये। साधारणतः प्रति सप्ताह कोई उच्च कोटि का विद्वान आकर किसी समाज में प्रवचन करे, यह तो सम्भव नहीं, ऐसी स्थिति में प्रवचन का भार समाज के किसी स्वाध्याय शील सदस्य के जिम्मे पड़ता है। होना तो यह चाहिये कि उपदेश और प्रवचन करने वाला सभासद अपने विषय की पूरी तैयारी करे और अपने वक्तव्य को अधिक से अधिक सरल, रोचक, और बोधगम्य बनाने की चेष्टा करे। परन्तु देखा यह गया है कि आज आर्यसमाजों के अधिवेशनों में उपदेश और प्रवचन के नाम पर जो कुछ वाहियात, ऊट पटांग बातें कही जाती हैं उन्हें सुनकर कोई भी नया व्यक्ति आर्यसमाज की ओर आकृष्ट होना तो दूर रहा, जो रहे सहे व्यक्ति होते हैं वे भी धीरे धीरे सत्संगों में आना कम कर देते हैं।

यह है साप्ताहिक अधिवेशनों का वास्तविक स्वरूप। आर्यसमाज जिस रूढ़िवादिता के विरुद्ध आरम्भ से आन्दोलन करता रहा, आज वह स्वयं भी रूढ़िवाद का शिकार हो रहा है। ऐसी स्थिति में हम क्या करें? हमारे विचार से साप्ताहिक सत्संगों के सुधार और परिष्कार के लिये निम्न बातों पर ध्यान दिया जाना अत्यावश्यक है —

[1] सत्संग का समय निश्चित रहे। इसके लिये सार्वदेशिक सभा ग्रीष्म और शीत ऋतु के दिन मान को लक्ष्य में रखकर वर्ष भर के लिये दो समय विभाग नियत करे, जिनका प्रत्येक समाज दृढ़ता से पालन करे।

[2] यज्ञारम्भ से पूर्व सामूहिक संध्या हो, जिसमें समस्त सदस्य अनिवार्य रूप से उपस्थित रहें यज्ञ का भार मन्त्री और दो चार अन्य लोगों पर ही नहीं छोड़ दिया जाय। यह भी हो सकता है कि मन्त्री प्रति सप्ताह के लिये चार सभासदों को सपत्नीक यज्ञ में बैठने के लिये आहूत करे। इसका यह लाभ होगा कि समाज का प्रत्येक सदस्य यज्ञ विधि सीख जायेगा। समाज का पुरोहित या कोई अन्य स्वाध्यायशील विद्वान यज्ञ का ब्रह्मा माना जाय और उसकी आज्ञा का कठोरता

से पालन किया जाय। यज्ञ की सामग्री और अन्य उपकरणों तथा यज्ञ वेदी की स्वच्छता का भार सेवक को सौंपकर निश्चिन्त हो जाना मंत्री के अनुत्तरदायित्व का सूचक है।

[३] यज्ञ के पश्चात् ईश्वर भक्ति के एक या दो भजन हों। ऐसे भजन सामूहिक रूप से भी गाये जा सकते हैं। अमीचन्द, नारायण प्रसाद बेताब, वासुदेव, नाथूराम शंकर, प्रकाशचन्द्र कविरत्न आदि के भजन उच्च कोटि के हैं जिनका सामान्यतया उपयोग किया जाना चाहिये। सामूहिक रूप से गाये जाने वाले भजनों के अतिरिक्त जो भजन गाये जाँय उनके लिये वाद्यों का प्रयोग किया जा सकता है। परन्तु यह ध्यान रक्खा जाय कि संगीत के माधुर्य व स्वारस्य की कहीं भी हत्या न हो। सत्संगों में खण्डनात्मक और राजनैतिक विवादपूर्ण पद्यों के लिये कोई स्थान नही होना चाहिये।

[४] जिस पुस्तक की कथा की जाय, उसका प्रसंग पूर्व से ही श्रोताओं को ज्ञात होना चाहिये। कथा करने वाला अपने विषय की पूरी तैयारी सप्ताह भर करे। कथा के समय हर सदस्य के पास उस ग्रन्थ की एक एक प्रति का होना अधिक लाभप्रद हो सकता है। जिस प्रकार गिरजे की ओर प्रयाण करते समय एक ईसाई बाइबिल लेना नही भूलता, इसी प्रकार कोई आर्य सत्यार्थप्रकाश के बिना समाज मन्दिर में क्यों प्रवेश करे?

[५] यथा सम्भव वेद मन्त्रों के आधार पर ही प्रवचन और उपदेश हों। उपदेशों में विषयान्तर करना, अनावश्यक दृष्टान्त देने लगना अथवा सामयिक राजनैतिक आन्दोलनों की अनावश्यक चर्चा और आलोचना करने लगना उपदेश के महत्व को नष्ट कर देता है। आर्यसमाज की वेदी की पवित्रता की रक्षा करना प्रत्येक आर्य सभासद का कर्तव्य है। आर्यसमाजों के साप्ताहिक अधिवेशनों को व्यर्थ के वादविवाद और पार्टी के अखाड़े बनने से बचाना आवश्यक है।

[६] अधिवेशन में सम्मिलित होने वाले प्रत्येक आर्य सभासद की उपस्थिति को अंकित करने के लिये एक रजिस्टर रहना चाहिये।

[७] समाज के अधिकारी साप्ताहिक अधिवेशन की सफलता के लिये विशेष प्रयत्नशील हों। वे सभासदों को सपरिवार सम्मिलित होने के लिये प्रेरित करें और स्वयं उसके लिये उदाहरण स्वरूप बनें।

[८] आर्यसमाज उपासना मन्दिर हैं। अतः उनकी पवित्रता और मर्यादा की रक्षा करना अत्यावश्यक है। जिन समाजों में कन्या पाठशालायें तथा अन्य शिक्षण संस्थायें चलती हैं, उनमें मन्दिरों की पवित्रता और भव्यता नही रहती। फलस्वरूप वहाँ का वातावरण आध्यात्मिक भावों के उद्रेक करने में असफल रह जाता है। यही कारण है कि आर्यसमाज शुष्क, नीरस, तर्कवादियों के संगठन के रूप में कुख्यात हो रहा है। उसमें भक्ति और उपासना के दिव्य भावों का अभाव हो गया है।

क्या हम यह आशा करें कि आर्यसमाजों के अधिकारी गण इस ओर ध्यान देकर अपने साप्ताहिक सत्संगों को यथार्थ में उपयोगी बना सकेंगे?

शेष पृष्ठ ३७ का

पूर्व पुरुषाओं से कोई बहुत अधिक श्लाघनीय वस्तु नहीं है और वैदिक यज्ञों का उनके द्वारा यह कह कर विरोध किया जाना कि वे लोगों की मांस लोलुप प्रवृत्ति के कारण उद्भूत हैं वैसा ही है जैसा स्वयं शीशे के मकान में बैठ कर दूसरों पर पत्थर फेंकना।

स्वाध्याय का पृष्ठ –

सनत्कुमार का नारद के प्रति उपदेश

(ले० श्री भवानी लाल 'भारतीय' एम० ए०)

उपदेश की इच्छा से महर्षि नारद भगवान् सनत्कुमार के समीप गये और बोले, " भगवान् मुझे उपदेश प्रदान करें। " सनत्कुमार ने उनकी पात्रता जानने के लिये उनसे पूछा - तुम जो कुछ जानते हो, वह मुझे बतलाओ, ताकि मैं उसके आगे की बात बता सकूं। उत्तर में महर्षि नारद ने जिन विद्याओं के नाम बताये, उनकी लम्बी सूची यह सिद्ध करने के लिये पर्याप्त है कि प्राचीन उपनिषद् कालीन ऋषियों का ज्ञान कितना विस्तृत था। विभिन्न प्रकार की भौतिक और आध्यात्मिक विद्याओं को आत्मसात् कर लेने के पश्चात् भी उनकी ज्ञान पिपासा चरम तत्व का साक्षात्कार न कर लेने तक शान्त नहीं होती थी।

नारद ने कहा, महाराज मैं चारों वेदों के अतिरिक्त इतिहास, पुराण, व्याकरण, श्राद्ध कल्प, गणित, खगोल उत्पात ज्ञान, तर्क शास्त्र, नीति शास्त्र निरुक्त, ब्रह्म विद्या अर्थात् वेदांग ज्ञान, भूत-विद्या, क्षत्र विद्या, धनुर्वेद, नक्षत्र विद्या, ज्योतिष् सर्प विद्या, और नृत्य, गान, वाद्य और शिल्पादि विज्ञान जानता हूँ। ज्ञान राशि के बृहद् कोशों के सदृश इन विभिन्न विद्याओं के जानने के उपरान्त भी नारद को सन्तोष नहीं है। उसने कहा, " भगवन् मैं केवल मंत्र वेत्ता ही हूँ। आत्म वेत्ता नहीं। मैंने आप जैसों से सुना है कि आत्म वेत्ता शोक को पार कर लेता है। अतः मैं आपसे उस उपाय को जानना चाहता हूँ जिससे मनुष्य शोक सागर से पार हो जाय।

नारद की बहुज्ञता को जानते हुये भी सनत्कुमार समझ गये कि ये सब शास्त्र अपरा विद्या के ही अन्तर्गत आते हैं। परा विद्या वह है जिससे अक्षर, ब्रह्म का ज्ञान होता है। अब तक नारद ने केवल नाम को ही जाना है। नाम को जानने का तात्पर्य है केवल पुस्तकीय ज्ञान शाब्दिक-ज्ञान। यहाँ से ही सनत्कुमार का उपदेश प्रारम्भ हो जाता है। नाम से आगे जो क्रम चलता है उसमें वाक्, मन, संकल्प, चित्त, ध्यान, विज्ञान, बल, अन्न, जल, तेज, आकाश, स्मरण, आशा, प्राण, चौदह तत्व आते हैं। इस प्रकार प्राण के आधार भूत आत्म तत्व की प्रतीति कराने के पश्चात् सनत्कुमार ने सत्य, विज्ञान, मति श्रद्धा, निष्ठा, कृति और सुख को जानने योग्य बताया। यह शाश्वत सुख भूमा रूप परमात्मा में स्थित है

" यो वै भूमा तत्सुखं नाल्पे सुखमस्ति भूमैव सुखं भूमा त्वेव विजिज्ञासितव्य इति "

निश्चय जो भूमा है वही सुख है, अल्प में सुख नहीं है। भूमा ही सुख है। भूमा की ही जिज्ञासा करनी चाहिये।

उस भूमा रूप परमात्मा को जानने के पश्चात् कुछ भी जानना शेष नहीं रह जाता। भूमा अमृत है और जो अल्प है वह मर्त्य है। नारद ने पूछा; " भगवन् यह भूमा किसमें प्रतिष्ठित है ? " सनत्कुमार बोले, " परमात्मा स्व महिमा में ही प्रतिष्ठित है।

शेष पृष्ठ ३४ पर

ईश्वर : एक दार्शनिक विवेचन

[ले० श्री पन्ना लाल परिहार बी० ए० एल० एल० बी०, जोधपुर]

विश्व में एक सर्व नियन्ता गूढ़ और व्यापक सच्चिदानन्द सत्ता है। परन्तु सूक्ष्म होने पर दिखती नहीं। फिर भी इससे इनकार नहीं किया जा सकता। ।। वेद का उपदेश है—

वेदाहमेतं पुरुषं महान्तमादित्य वर्णं तमसः परस्तात्। तमेव विदित्वा अतिमृत्युमेति नान्यः पंथा विद्यते अयनाय ।।

अर्थात् विश्व में व्यापक पुरुष विशेष महान शक्ति को मैं जानता हूँ जो दिव्य प्रकाश रूप और अन्धकार प्रकृति से परे सूक्ष्म है। उसी परम पुरुष को जान कर प्राणी मृत्यु या जन्म मरण के बन्धन से पार हो जाता है। मुक्ति का मार्ग इसके सिवाय कोई नही है।

क्या यह सत्ता सिद्ध या प्रमाणित हो सकती है? सांख्य दर्शन ने लिखा है कि ईश्वरा सिद्धेः। ईश्वर सिद्ध नहीं हो सकता। इस वाक्य से कई लोग सांख्य को अनीश्वरवादी या नास्तिक बताते हैं। परन्तु यह भ्रम है। कपिल का अभिप्राय यह है कि साधारण प्रमाण और साधनों से ईश्वर असिद्ध है। क्योंकि परमेश्वर आत्म ज्ञान का विषय है। यह योग द्वारा जाना जाता है। साधारणतया वस्तु की सिद्धि लक्षण और प्रमाण से होती है। प्रमाण तो एक वृत्ति है। वृत्ति मन का व्यापार है। मन व बुद्धि से परे सूक्ष्म सत्ता है परमात्मा। अतः बुद्धि की पकड़ और पहुँच से परे है भगवान। पतंजलि ने ईश्वर का लक्षण दिया है- जो क्लेश, कर्म विपाक (कर्म फल) और आशय (हृदय या मन चतुष्टय) से सूक्ष्म, अछूता पुरुष विशेष है, वह ईश्वर है। इस प्रकार परमेश्वर इन्द्रियों से परे और मन और बुद्धि से सूक्ष्म है। परमात्मा आत्मा के अनुभव का विषय है अनुमान और शब्द प्रमाण से हम अपने को पिता का पुत्र मानते हैं। देखा किसने।

परमात्मा के प्रमाण में प्रत्यक्ष, उपमान और शब्द प्रमाण भी सन्तोषप्रद नहीं होते। अनुमान में प्रमाण से काम लिया जाता है। लिंग या लक्षण के ज्ञान से लिंगी का ज्ञान करना अनुमान है। जहां पर धूंआ है वहां अग्नि है। अनुमान तीन प्रकार का होता है। पूर्ववत अर्थात् कारण से कार्य जानना। शेषवत अर्थात् कार्य से कारण जानना और सामान्य शेषवत अनुमान से परमात्मा को जानो। सृष्टि है तो सृष्टा भी है।

अनुमान के अन्तर्गत चार प्रकार की युक्तियां दी जाती हैं। (१) एक सृष्टि रचना सम्बन्धी [cosmological]

(२) कारण और उद्देश्य सम्बन्धी (teleological)

(३) कर्म, फल, पाप पुण्य सम्बन्धी (moral)

[४] अस्तित्व और आधार आधेय सम्बन्धी (ontological)

कारण और कार्य का नियम सर्वत्र काम कर रहा है। सृष्टि में चेतनता भी है। उसका उद्देश्य है जो चेतन सत्ता का पता देता है। बिना चेतन के ज्ञान आया कहां से। ज्ञान का आदि स्रोत है जहां से विकास होता है। कर्मवाद में पाप पुण्य के फल दुख सुख मिलते हैं। पाप करके भी कोई दुख नहीं चाहता। न्याय नियम से यथावत फलदाता कोई है। कर्म जड़ है और चेतन के आश्रित है। कर्म जड़

स्वयं फल नहीं दे सकता। विश्व का आधार भी कोई है। निराधार कोई वस्तु ठहर नहीं सकती। ज्ञान का क्रमशः विकास केवल अनुभव के आधार पर होना संभव नहीं। सृष्टि से पूर्व ज्ञान का दाता होना चाहिये।

अनुमान की युक्ति बुद्धिवाद का विषय है। इससे किसी हद तक सन्तोष होता है। प्रथम आत्मा को जानो। आत्मा की अमरता स्वयं सिद्ध है। मैं सोचता हूँ। इसलिये कोई विचारक भी विद्यमान अवश्य है। अभाव से भाव नहीं बनता। इसलिये मेरा अस्तित्व जो वर्तमान में है वह पहले भी था और भविष्य में भी रहेगा। यह है आत्मा का अस्तित्व और अमरपन। कोई व्यक्ति अपने अस्तित्व से इनकार नहीं कर सकता। अब इसी युक्ति को आगे बढ़ावो। शरीर में जैसे आत्मा है, वैसे ही विश्वात्मा होना चाहिये।

विश्व में प्रत्येक विज्ञान विभाग में असंख्य अटल नियम कार्य कर रहे हैं। सूर्य का उदय और अस्त होना, तारात्रों की गति, ऋतु परिवर्तन आदि में कहीं त्रुटि नहीं है। नियमों के पीछे एक योजना है, उद्देश्य है जो छुपा हुआ है। योजना बिना चेतन और ज्ञान सत्ता के संभव नहीं। जड़ पदार्थों में योजना बनाने की शक्ति नहीं है। जड़ में चेतनता और ज्ञान कहां से आया। दो पदार्थों के मेल का परिणाम चेतन ज्ञान नहीं हो सकता। यदि ऐसा मानो तो जिन पदार्थों से कोई वस्तु बनी है, उनमें भी गुप्त रूप से चेतनता विद्यमान थी। अन्यथा अभाव से भाव कैसे हो गया।

विश्व में सर्वत्र अटल नियमों का जाल बिछा हुआ है। विज्ञान के प्रत्येक विभाग में नियम काम कर रहे हैं। कार्य का कारण अवश्य होता है। प्रत्येक वस्तु में गति हो रही है। गति का स्रोत अवश्य है। नियम है तो नियामक भी है। सृष्टि एक महान प्रबन्ध है। प्रबन्धक भी है। इस मिल्कियत का मालिक भी है। लावारिस नहीं है। संसार के पदार्थ अवयव से बने हैं। बनाने वाला भी है। अवयव स्वयं नहीं जुड़ जाते। उपादान कारण (Material cause) के साथ निमित्त कारण (Efficient cause) भी है। घड़ा है तो मिट्टी भी है और कुम्हार भी। स्वभाव से ही कोई वस्तु बनती नहीं। स्वभाव का अर्थ है स्वस्य भाव (Inherent Quality) जो किसी पदार्थ में सदा रहता है। यदि सृष्टि का स्वभाव बनने का है तो बनती ही चली जायगी। बिगड़ेगी नहीं। यदि सृष्टि का स्वभाव बिगड़ने का मानो तो वह बिगड़ती ही चली जायगी। और यदि इसका स्वभाव बनना और बिगड़ना दोनों है तो क्षण क्षण में वह बनती बिगड़ती रहेगी। उसमें स्थिरता नहीं हो सकती। यदि यह मानों कि नियत समय पर ऐसा होना स्वभाव है तो यह ज्ञानपूर्वक योजना का फल है जो पदार्थ में नहीं। अतः स्वभाव वाद ठीक नहीं है।

तब प्रश्न उठता है कि क्या सृष्टि अकस्मात (Chance) से बन गई है। ऐसा भी संभव नहीं। वर्णमाला के अक्षरों को वर्षों तक उछालते रहो। फिर भी कोई शब्द स्वतः नहीं बनते न पुस्तक रची जा सकती। चेतन और ज्ञान पूर्वक सत्ता अक्षरों को लिखकर ग्रन्थ रचती है सृष्टि के परमाणु भी किसी चेतन ज्ञानी सत्ता के आधार से कार्य कर रही है जड़ परमाणुओं में चेतनता और ज्ञान कहां हैं।

यह विश्व मानों एक जीवित माता का उदर है। यदि माता मर जावे तो उदरस्थ बच्चा कैसे जीता रह सकता है

लोग कहते हैं कि घड़ी तो है परन्तु घड़ी साज नजर नहीं आता। इसलिये घड़ी का बनाने वाला नहीं है। हलुआ सामने है। उसमें घी, शक्कर, मैदा, पानी सब है। परन्तु मिलाने वाला हलवाई कहां है, उसे हलवे में दिखाओ। अनुमान लगाने का कहते हैं तो वे प्रत्यक्ष प्रमाण का आग्रह करते हैं। आत्मा का अनुभव और अभ्यास का कहते हैं तो वे इस पचड़े में नहीं पड़ते। वे कहते हैं कि जैसे नदी का बनाने वाला कोई नहीं है तो सूर्य का बनाने वाला कैसे माने? यह युक्ति उनकी भ्रमात्मक है। सिद्ध कोटि से चल कर साध्य कोटि की वस्तु सिद्ध की जाती है। नदी और सूर्य दोनों ही साध्य कोटि में हैं। सही? उदाहरण यह है कि जैसे ताजमहल का बनाने वाला था तो कमल जो सृष्टि है उसका स्रष्टा भी है।

क्या आत्मा और ईश्वर प्रत्यक्ष हो सकता है। उत्तर है योग साधन द्वारा आत्मा से परमात्मा को जानो। इसका अष्टांग योग का क्रम निर्धारित है। अभ्यास और वैराग्य से आगे बढ़ो तो परमात्मा का प्रत्यक्ष या साक्षात्कार होगा। अन्त: करण (हृदय) की गांठ खोलो। चित्त की स्थिरता करो। वृत्तियों का निरोध करो तो आत्मा का प्रकाश अनुभव होगा। अन्यथा चित्त वृत्तियों की समानता ही सृष्टि का स्वरूप है।

ईश्वर का कर्ता कोई नहीं। कर्ता का कर्ता नही होता। ईश्वर चल और अचल दोनों है। चुम्बक अचल है परन्तु लोहे को चलाता है ईश्वर अशरीरी है फिर भी अपने स्वभाविक ज्ञान बल से सृष्टा है। माता अपने उदर में बच्चे के हाथ पैर नहीं बनाती। वे स्वयं बनते हैं नियम से। ईश्वर सृष्टि का रचयिता है. निमित्त कारण है। वह उपादान नहीं है, उपादान कारण नहीं है। प्रकृति उपादना कारण है। जीव सान्त है फिर भी योग और आत्म दर्शन द्वारा अनन्त परमेश्वर की थाह? ले सकता है। माता पिता ने हमें नहीं बनाया। वे तो पार्थिव शरीर के निमित्त कारण हैं। सृष्टि में जो अटल नियम काम कर रहे हैं उनमें कोई त्रुटि नहीं है, अपवाद नही है। अपवाद और त्रुटि का भान हमारी एकांगी सीमित ज्ञान की दृष्टि है। सर्वज्ञ की दृष्टि में सब कुछ ठीक है। यदि कोई ईश्वर को नहीं मानता है तो उससे भगवान पर कोई असर नहीं। वह व्यक्तिगत हानि उठाता है। परमात्मा सर्व सुखों की खान और दिव्यप्रकाश पुंज है। यदि कोई सर्वोच्चसत्ता का आश्रय नहीं लेता, गुणों को धारण नहीं करता और प्रकाश से दूर रहना चाहता है तो यह उसी की हानि है। उपासना करना अपनी ही भलाई करना है इसमें हमारा ही स्वार्थ है। यह परमेश्वर की प्रशंसा या खुशामद नहीं है। भगवान किसी से खुश और नाराज नही होता।

प्रश्न उठता है कि ईश्वर को क्यो माने? उत्तर है कि आनन्द प्राप्ति के लिये परमात्मा की उपासना करो। सत चित् से सच्चिदानन्द बनो। प्रभु के सम्पर्क से आनन्द होगा और सुख दुख का द्वन्द्व मिटेगा और जन्म मरण के चक्र से छूट जावोगे। उपासना से शुभ कर्म में प्रवृत्ति होती है। ईश्वर के न्याय नियम के भय के कारण वृथा

अभिमान दूर रहते हैं। जीवन में एक उच्च आदर्श भी होना चाहिये। परमात्मा हमारा आदर्श है, ध्येय है, उसकी प्राप्ति ही मोक्ष है, परमानन्द है, उपासना से चित्त शुद्धि होती है। आत्मिक बल बढ़ता है। हममें नम्रता और उत्साह आते हैं। विश्व में हमारे सुख साधन जिसने जुटाये हैं, उसके प्रति कृतज्ञता प्रकाश करना भी उपासना है। जो प्रभु भक्त है, वह जनता को भी प्रेम करता है।

केवल कर्तव्य पालन से जीवन अधूरा है। यह एक पहिये की गाड़ी होगी। कर्म के साथ ब्रह्म ज्ञान भी जरूरी है। विद्या और अविद्या दोनों को साथ साथ जानो। केवल कर्म करना बिना उद्देश्य की यात्रा है।

प्रश्न है कि यदि कर्तव्य कर्म ही करते रहें तो ईश्वर विश्वास और उपासना की क्या आवश्यकता है। निष्काम कर्म द्वारा ही हमें मोक्ष मिल जायगा। उत्तर है कि अविद्या (कर्म) और विद्या दोनों को साथ साथ जानो। अविद्या से मृत्यु (दुख) से तर जावोगे। परन्तु विद्या [ब्रह्म ज्ञान] द्वारा अमृत [मोक्ष] का भोग करोगे। (यजु- ४०) ज्ञान के बिना मुक्ति नहीं होती। ज्ञान ही मुक्ति है। वही मुक्ति का स्वरूप है। हृदय ग्रन्थि के विच्छेद होने पर कर्म का क्षय होता है। कर्म हम अपने अन्तः करण के अनुसार करते है। परन्तु जीव अल्पज्ञ और सान्त है। वह भूल कर सकता है। उससे सत्य मार्ग और उद्देश्य प्रदर्शक उच्च शक्ति का सहारा लेना जरूरी है। उपासना मागे हमारे अन्तः करण का साबुन है। इससे चित्त शुद्धि होती रहती है और दिव्य प्रकाश मिलता रहता है। केवल कर्म करना एकांगी यात्रा है। वह बिना लक्ष्य का काम है। कर्म तो साधन है। ज्ञान साध्य है।

बिना साध्य (लक्ष्य) के केवल साधन (कर्तव्य कर्म) से मानो अंधेरे में टटोलना है। यात्री को भटकने जाने की संभावना है।

कर्म से तो दुख से छुटकारा होता है। वह स्वर्ग का मार्ग है। परन्तु मुक्ति का मार्ग तो ज्ञान है जो उपासना से आता है। केवल कर्म क्षेत्र में विचरने से मिथ्याभिमान होता है जिससे अत्याचार, अनाचार की संभावना है क्योंकि मनुष्य अपने से अन्य उच्च सत्ता को मानता ही नहीं उच्च सत्ता परमेश्वर को मानने और उसकी उपासना से कर्म में उत्साह होता है। गीता में भी कर्म योग को सरल साधन माना है परन्तु सांख्य योग को श्रेष्ठ बताया है। सर्वज्ञ, सर्व शक्ति से सम्पर्क से अल्पज्ञ आत्मा को दीप्त करते रहो। यही भक्ति है। इसमें ईश्वर का कोई स्वार्थ नही। हमारी ही भलाई है। निष्काम कर्म से तो संचित कर्मो का क्षय होता और नवीन कर्म नहीं जुड़ते। यह मार्ग नकारात्मक है। आनन्द मिलना तो ब्रह्म ज्ञान द्वारा ही होता है। कर्म तो यज्ञ रूप है जिससे स्वर्ग सुख मिलता है। मोक्ष तो ज्ञान से मिलेगा। कर्म से मनोवृत्ति होती है। इस वृति के निरोध बिना आत्म दर्शन का आनन्द नहीं हो सकता। जिस प्रभु ने हमें सब कुछ दिया हैं उसके लिये कृतज्ञता प्रकाश करना भी उपासना है। यह हमारा धर्म है यद्यपि इससे परमात्मा की प्रशंसा का प्रश्न नहीं है। अतः यजु० ४० में कहा है—

विद्यां च अविद्यां च यस्तद् वेदो भयं सह।
अविद्यया मृत्युं तीर्त्वा विद्यया मृतं मश्नुते।

शेष पृ० ४८ पर देखिये

सैद्धान्तिक चर्चा—

" सत्यार्थ प्रकाश भाष्य--चतुर्थ समुल्लास "

लेखक —[वैदिक गवेषक श्री पं० शिवपूजन सिंह कुशवाहा ' पथिक ' बी० ए० सिद्धान्तवाचस्पति ।]

गतांक से आगे

"सोलहवें वर्ष से ले के चौबीसवें वर्ष तक कन्या और पच्चीसवें वर्ष से ले के अड़तीसवें वर्ष तक पुरुष का विवाह समय उत्तम है।"

भाष्य:- मानव जीवन को सुखमय बनाने के लिये हमारे ऋषियों ने सोलह संस्कार निर्माण किये हैं। इनमें विवाह संस्कार अत्यन्त विचारणीय संस्कार है। विवाह के मुख्यत: दो उद्देश्य माने जाते है — [१] दाम्पत्य प्रेम , [२] सन्तानोत्पत्ति। इन दोनों में प्रथम ही मुख्य है। यह दाम्पत्य प्रेम जो विवाह का सर्वोच्च उद्देश्य और गार्हस्थ्य जीवन का सर्वस्व है स्त्री - पुरुषों में कब उत्पन्न होता है ? आइये पाठक—वृन्द इस पर विचार करें।

बड़े बड़े मनीषियों के विचार हैं कि वैदिक काल में कन्याओं के विवाह प्रौढ़ावस्था में होते थे जिससे सहज ही दाम्पत्य प्रेम उत्पन्न होता था। जब से समाज में बाल विवाह रूपी कोढ़ ने प्रवेश किया है तबसे समाज का अध:पतन हो रहा है और गार्हस्थ्य जीवन नारकीय दृश्य हो रहा है। अब भी यदि कन्याओं का विवाह प्रौढ़ावस्था में हो तो गार्हस्थ्य जीवन सुख—मय हो जायेगा।

अब प्रौढ़ावस्था के विवाह का प्रमाण वेद , गृह्य-सूत्र तथा विद्वानों के विचारों से प्रदर्शित किया जाता है।

आर्षप्रमाण — " ब्रह्मचर्येण कन्या३युवानं विन्दते पतिम् " [अथर्व० कां० ११ सू० ५ , मं० १८]

महर्षि दयानन्दजी भाष्य — " जैसे लड़के ब्रह्म—चर्य सेवन से पूर्ण विद्या और सुशिक्षा को प्राप्त होके युवती , विदुषी , अपने अनुकूल प्रिय सदृश्य स्त्रियों के साथ विवाह करते हैं वैसे [कन्या] कुमारी [ब्रह्म—चर्येण] ब्रह्मचर्य सेवन से वेदादि शास्त्रों को पढ़ पूर्ण विद्या और उत्तम शिक्षा को प्राप्त युवती होके पूर्ण युवावस्था में अपने सदृश्य प्रिय विद्वान (युवानम्) पूर्ण युवावस्था युक्त पुरुष को (विन्दते) प्राप्त होवे। इसलिये स्त्रियों को भी ब्रह्मचर्य और विद्या का ग्रहण अवश्य करना चाहिये। " ३

चतुर्वेदभाष्यकार पं० जयदेव शर्मा विद्यालङ्कार , मीमांसातीर्थ — "(ब्रह्मचर्येण) ब्रह्मचर्य के पालन से (कन्या) कन्या (युवानं पतिम् विन्दते) युवापति को प्राप्त करती है। " ४

सिद्धान्त-मर्मज्ञ, विद्याभूषण पं० सुरेन्द्र शर्मा गौर वेद-काव्यतीर्थ , साहित्योपाध्याय — "ब्रह्मचर्य पूर्वक युवती कन्या ब्रह्मचारी युवा पुरुष को पति चुने। " ५

कतिपय पौराणिक पण्डित इस मंत्र के "ब्रह्म—चर्येण " पद को 'युवानं' के साथ जोड़ते हुये यह अर्थ करने का प्रयास करते हैं कि " कन्या ब्रह्मचर्य

३. सत्यार्थ प्रकाश, तृतीय समुल्लास।

४. अथर्ववेद संहिता भाषाभाष्य , द्वितीयावृत्ति , पृष्ठ २३२-२३३

५. साप्ताहिक 'आर्य-मित्र' वर्ष ४१, सितम्बर १ , सन् १६३८ ई० ।

से युवक पति को प्राप्त करती है। कन्या का अर्थ भी वे "दस वर्षा भवेत् गौरी...." आदि कल्पित श्लोकों के आधार पर १२ वर्ष की बालिका का करते हैं फिर उसके लिए वेदाध्ययन की आज्ञा ही कैसे हो सकती है।

किन्तु श्री सायणाचार्य जी के भाष्य (जिसे सभी पौराणिक पण्डित मानते हैं) से इन कल्पित अर्थों की निवृत्ति स्वयं हो जाती है।

श्री सायणभाष्य — "अत्रापि ब्रह्मचर्यं प्रशस्यते (कन्या) अकृत विवाहा स्त्री ब्रह्मचर्यं चरन्ती तेन ब्रह्मचर्येण (युवानम्) युवत्व गुणोपेतम् उत्कृष्टं [पतिम्] [विन्दते] लभते।"

अर्थात् — "यहाँ ब्रह्मचर्य की प्रशंसा है। कन्या ब्रह्मचर्य का अनुष्ठान करती हुई उसके द्वारा युवक उत्तम पति को प्राप्त करती है।"

यहाँ पर श्री सायण ने **कन्या का अर्थ** १० वर्ष की बालिका न करते हुए 'अविवाहा स्त्री' ऐसा किया है और 'ब्रह्मचर्यं चरन्ति' इन शब्दों को लिखते हुए उस अनर्थ का परिहार कर दिया है जो 'ब्रह्मचर्येण' को 'युवानम्' के साथ जोड़ने का व्यर्थ और अप्रासंगिक यत्न किया जाता है।

ऋग्वेद ३।३३।१० के भाष्य में श्री सायण ने 'कन्या' का अर्थ 'युवतीः' ऐसा किया है। ऋग्वेद १०।१०७।१० के भाष्य में भी "अभिनव यौवना" यह 'कन्या' का अर्थ किया है। "विन्दते" पद का अर्थ श्री कुल्लूक भट्ट ने मनुस्मृति ९।९० की टीका में 'स्वयं वृणीत' अर्थात् स्वयं चुनाव करे, यह किया है।

यहाँ जिस 'ब्रह्मचर्य' शब्द का प्रयोग है उसकी व्याख्या श्री सायणाचार्य ने इसी सूक्त, अध्याय ११।७ के अनेक मंत्रों में इस प्रकार की है "ब्रह्मचर्येण तपसा राजा राष्ट्रं विरक्षति"।

अध्याय ११।७।१७ की व्याख्या में वे लिखते हैं :—

"ब्रह्मचर्येण— ब्रह्म वेदः तदध्ययनार्थमाचर्यम् आचरणीयं समिदाधान भैक्ष्यचर्योर्ध्वरेतस्कत्वादिकं ब्रह्मचारिभिरनुष्ठीयमानं कर्म ब्रह्मचर्यम् तेन"।

अर्थात् — ब्रह्म का अर्थ वेद है उसके अध्ययन के लिये जो भी ब्रह्मचारियों द्वारा किये जाते हैं वे ब्रह्मचर्य शब्द में आते हैं।

इस सूक्त के प्रथम ही मंत्र में जो ब्रह्मचारी शब्द आया है उसकी व्याख्या में श्री सायणाचार्य लिखते हैं :- "ब्रह्मणि-वेदात्मकेऽध्येतव्ये चरितुं शीलमस्य स तथोक्तः"।

अर्थात्— ब्रह्मचारी वह है जो वेद के अध्ययन में विशेषरूप से तत्पर है। ब्रह्म का अर्थ वेद होता है और चर्य में जो चर धातु है उसके अर्थ गति अर्थात् ज्ञान, गमन, प्राप्ति और भक्षण हैं। इस प्रकार ब्रह्मचर्य का मुख्य शब्दार्थ वेद का ज्ञान प्राप्त करना सिद्ध होता है।

श्री शंकराचार्य ने "सर्वे वेदा यत्पदमामनन्ति तपांसि सर्वाणि च यद्वदन्ति। यदिच्छन्तो ब्रह्मचर्यं चरन्ति तत्ते पदं संग्रहेण ब्रवीम्योमित्येतत्" - इस कठोपनिषत् के वचन की व्याख्या में 'ब्रह्मचर्य' का अर्थ "गुरुकुलवास-लक्षणम् अन्यद् वा ब्रह्मप्राप्त्यर्थम्" ऐसा किया है अर्थात् गुरुकुल में वास अथवा ब्रह्म-परमात्मा और वेद की प्राप्ति के लिए जो कार्य किया जाय ऐसा किया है।

continuance of the kingship is the fact that if it were abolish something would have to be put into its place. would be necessary to appoint, or to elect, or in sor other way to secure a titular head of the nation. T prime minister is not the titular chief executive in any countr It is impossible to conceive of a stable parliamentary governme without there being at its head someone whose tenure of offi is beyond the fickleness of a parliament or a congress. This tenu must be long enough to assure stability—be it four years as America, seven as in France, or for life as in Britain. If the Briti monarchy were abolished and a republic set up, it would be nece sary to provide for a Lord Protector, or a President, or some oth functionary chosen either by parliament as in France, or by t people as in America.

SOME PRACTICAL REASONS.

The question would then arise: What powers should this titul executive possess? If he were given a large measure of independe authority, as in the United States, it would nece sarily be at the expense of powers now possessed the cabinet and through it by parliament. In oth words there would be an end to the supremacy of the House Commons. If, on the other hand, the new chief executive we given no substantial power, or as little as is possessed by the Preside of the French Republic, he would be only perpetuating the kingsh under a new name. And there would be the constant danger th this elective head of the state, although endowed with no real pow would strive by devious means to obtain it. He would be und constant temptation to do what President Millerand did in Fran some years ago—with similar results.[2] When the titular ch executive has no real power there is a good deal to be said for keepi the post hereditary.

AN AMERICAN OR A FRENCH PRESIDENT?

Englishmen have grown accustomed to the direct and continuo control of the House of Commons over the executive branch of t government. They have never looked with favor on t doctrine that one branch should serve as a che upon the other. There is no likelihood that th would consent to the establishment of an independent president executive on the American model. The only alternative is an exec

NEITHER TYPE WOULD DO.

[1] Germany is perhaps an exception, for the office of chancellor is there combi with the titular headship of the Reich.

[2] See Chapter XXIII.

tive like the President of the French Republic, who neither reigns nor governs. That, to the mind of the average Englishman, would be no improvement upon what he already has.

The British king has parted with his powers, or "holds them in abeyance" as some prefer to say, but this does not mean that he performs no useful service. The whole executive authority returns temporarily to his hands whenever a cabinet resigns. During the brief interval between the resignation of one prime minister and the installation of another, the king is the sole depositary of executive power. He is the one personage in the realm who stands aloof from partisan strife and can be depended on to act impartially. He is the umpire who sees that the great game of politics is played according to the rules. There are times, moreover, when a wise king can assume, in the public interest, the rôle of peacemaker between warring political factions whose hostility is working injury to the country as a whole. There can be no doubt that the influence of George V was helpfully directed towards the settlement of the Irish question.[1]

TANGIBLE SERVICES WHICH THE MONARCH PERFORMS.

SOME EXAMPLES.

In diplomacy, too, the king may at times render a signal service to the nation. Edward VII gave a notable illustration of this. When he came to the throne his country was without a friend in Europe. It was his desire to establish an *entente* with France, a desire which had the cordial support of his ministers. Within a few years, by a combination of persistence and tact, he considerably assisted the government in achieving this aim. A king can do some things which, if done directly by his ministers, would have motives of party politics attributed to them.[2]

Finally, the king supplies the vital element of personality and picturesqueness in government. The average man does not easily get hold of abstractions. Sovereignty, ministerial responsibility, powers of the crown, and such things mean little to him. But anyone can visualize a king on the throne. This is particularly important in a far-flung empire which includes white, black, brown, red, and yellow men on five continents. Tell a Dyak in Borneo, a Sikh in India, or a "big, black,

A SYMBOL OF IMPERIAL UNITY.

[1] See the documents printed in E. M. Sait and D. P Barrows, *British Politics in Transition* (Yonkers, N. Y., 1925), chap. i.

[2] See the discussion of this subject in Michael MacDonagh, *The English King* (London, 1929), pp. 230–234.

bounding beggar" in the Egyptian Sudan that he must give allegiance "to the concept of imperial unity" and he will get as far with the idea as he would with Einstein's proof of the finitude of space. But when you talk to him of a king who wears a crown, sits on a golden throne, and asks the allegiance of four hundred million people, he is more likely to get the picture.

THE LINK OF EMPIRE.

Moreover the king supplies the one tangible link which holds together all the members of the British commonwealth of nations, including Great Britain, Northern Ireland, India, Canada, Australia, South Africa, and the other overseas territories. To the dominions the legislation of the British parliament does not ordinarily extend. They have their own parliaments, their own cabinets, their own flags, and sometimes their own diplomatic representatives at foreign capitals. The one remaining bond among them all is the allegiance to the king, and in this sense the monarchy is a symbol of imperial unity. Since the enactment of the Statute of Westminster (1931) which gave virtually complete legislative autonomy to the dominions, however, the monarch is not believed to be such a clear symbol of imperial solidarity as he was in earlier years.[1] Nevertheless any change in the character of its titular headship would risk a snapping of the strongest tie which now holds a loose-jointed British commonwealth of nations together. For it is hard to believe that Canada, Australia, South Africa, and the rest would willingly transfer their homage to a President of the British Republic elected by Englishmen, Scotchmen, and Welshmen alone.

THE KING AS THE HEAD OF BRITISH SOCIETY.

In every country, no matter how democratic it may claim to be, there are bound to be ranks and gradations of society. These gradations may be based upon birth and lineage, or upon length of residence in the country, or upon wealth, or upon political prominence. In Great Britain, for many centuries, social status has rested very largely upon birth and lineage. This being the case, it is natural that the headship of British society should belong to the monarch. The king, the queen, and the members of the royal family are in a position, if they choose, to set the social standards of the nation. Whether they have performed this function better or worse than it would have been performed by a social leadership based upon wealth

[1] The somewhat technical reasons for this are explained in A. B. Keith, *The Privileges and Rights of the Crown* (London, 1936), pp. 107–116.

or upon popular election is a question upon which outsiders may disagree, but on which most Englishmen do not. Social leaders will arise under any form of government, and they will exercise a dominant influence not only upon the manners and tastes of the people but upon morals, art, literature, education, and benevolence. A royal court, when it is minded to set a good example, can do it in a very effective way. It can do much for the elevation of the public morality and for the improvement of the social amenities, for the advancement of learning, and for the enhancement of the national pride.

NOTHING WOULD BE GAINED IN GREAT BRITAIN BY ABOLISHING THE MONARCHY.

If the institution of royalty were standing in the way of political liberalism it would be another matter; but the abolition of the kingship would not make England any more democratic than she is today, because the people already control to the fullest possible extent all branches of their government. On the other hand the abolition of the monarchy would necessitate considerable changes in various branches of life not directly connected with politics. It would leave the Church of England without a titular head; it would compel a recasting of the social structure; it would sever the strongest formal tie that binds the dominions to the mother country, it would substitute an abstraction for a visible symbol as the basis of British allegiance. The saving in expenditure would be inconsequential, for the cost of maintaining the kingship is only five one-hundredths of one per cent of the total British budget.

THE FORCE OF HABIT.

The arguments for abolishing the British monarchy are like those put forth in favor of reformed spelling, the metric system and an international language like Esperanto: they would carry more weight if people were not accustomed to what they have. Englishmen, like all other people, and perhaps to an even greater extent, prefer what they are accustomed to—whether it be in diet, recreation, or political institutions. With a clean slate to work upon it is improbable that the British people would set up, in the twentieth century, an hereditary monarchy, a House of Lords, and an Established Church. But would the people of the United States now create an electoral college as part of the machinery for electing a president, or give all the states equal representation in the Senate, or let every state make its own divorce laws? Both countries are disposed to let well enough alone.

There are enough urgent problems without turning attention to the endurable anachronisms.

POPULARITY OF THE ENGLISH KINGSHIP.

The popularity of the kingship among all ranks of the British people has often been commented upon by outsiders. This was impressively demonstrated in the closing days of 1936 when Edward VIII gave up his throne and was succeeded by his brother. From all parts of the United Kingdom, from India, and from the various dominions there came a spontaneous pledge of loyalty to the new monarch, even though he had taken his title under circumstances which were unprecedented in the entire history of British government. This demonstration gave renewed proof of the service which the monarchy performs in lending "the charm of historic continuity to the political institutions of the British race."

IT HAS GROWN DURING THE PAST HUNDRED YEARS.

It was not always so. A century ago the royal prestige was at low ebb, but it made a notable advance during the long reign of Queen Victoria (1837–1901), and it has been growing ever since. There have been proposals to abolish the House of Lords, to reform the cabinet, and even to curb the power of the House of Commons, but from no source worthy of consideration has there emanated any serious proposal to abolish the monarchy. Seven or eight decades ago there was a republican group in England and it seemed to be gaining ground.[1] Today it has virtually disappeared, except for the Communists. Even the leaders of the Labor party, although some of them profess to be "republicans in principle," are agreed that the monarchy must be retained, essentially in its present form, because there would be great difficulty in getting both Great Britain and the dominions to agree upon anything else. The British people have come to realize that the monarchy, seated above the turmoil of personal and partisan strife, neutral in politics, and with no ambitions to gratify, lending dignity to government but not standing athwart the path of the public will—they have come to recognize that whatever may be the causes of their varied troubles, the monarch is not one of them. If the crown, as has been well said, is no longer the motive power of the ship of state, it is the spar upon which the sail is bent, and as such it is not only a useful but an essential part of the vessel.

[1] Michael MacDonagh, *The English King* (London, 1929), pp. 153–179.

General History. There is no single volume on the development of the British monarchy, and it would be impossible to cover the subject except by writing a constitutional history of the realm. On the development of the kingship to the close of the middle ages there is much material in the standard works of Freeman, Stubbs, Ramsay, Haskins, Maitland, Round, Norgate, Green, Tout, Vickers, and Davis—the titles of which may be found in the card catalogue of any good library. The vicissitudes of the monarchy during the Tudor and Stuart periods are narrated in the works of Gardiner, Pollard, Fisher, Innes, Montague, Trevelyan, and Firth, all of which are well known to every serious student of English history. Lecky and Walpole cover the eighteenth century. For the period 1760–1860 there is an excellent outline in the first volume of May and Holland (see *above*, p. 52). R. B. Mowat and J. D. G. Davies, *A Chronicle of Kingship, 1066 to 1937* (London, 1937), and Clive Bigham, *The Kings of England, 1066–1901* (New York, 1929), are good general surveys of the whole period, and Hector Bolitho, *Royal Progress: One Hundred Years of British Monarchy* (London, 1937) deals in a sketchy way with the past century.

Powers and Functions. The most useful study of the powers and functions of the crown at the present time is Sir William R. Anson, *Law and Custom of the Constitution* (4th edition, 2 vols., Oxford, 1922–1935), Vol. II, Part I, pp. 1–70, 247–259; but there are excellent chapters on the subject in A. Lawrence Lowell, *The Government of England* (2 vols., New York, 1908), Vol. I, chap. i; in F. A. Ogg, *English Government and Politics* (second edition, New York, 1936), especially chaps. iv–v; and in Sir John A. R. Marriott, *Mechanism of the Modern State* (2 vols., New York, 1927), Vol. II, chaps. xxiii–xxiv.

Royal Influence and Special Topics. Discussions of considerable value may be found in Michael MacDonagh, *The English King* (London, 1929), Sir Sidney Low, *The Governance of England* (revised edition, London, 1917), chaps. xiv–xv, A. B. Keith, *The King and the Imperial Crown* (London, 1936), and the same author's briefer book on *The Privileges and Rights of the Crown* (London, 1936), R. J. Blackham, *The Crown and the Kingdom* (London, 1933), Richard Jebb, *His Britannic Majesty* (London, 1935), John Buchan, *The People's King, George V* (Boston, 1935), and the books already mentioned on p. 64 (footnotes).

CHAPTER V

THE MINISTRY AND THE CABINET

The cabinet lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the monarch, or to parliament, or to the nation; or the relations of its members to one another, or to their head.—*W. E. Gladstone.*

For more than two centuries the statement of an eminent prime minister which stands at the head of this page was literally true, and it gave warrant to his further remark that "the British cabinet is the most curious formation in the political world of modern times." But it is no longer true that the cabinet exists "without a single line of written law" on which to rest itself, for the Ministers of the Crown Act (1937) expressly mentions the cabinet and provides a schedule of salaries for its members. Incidentally this act also provides a salary for the leader of the opposition in the House of Commons although he is the principal thorn in the flesh of the cabinet.

A SLIM LEGAL BASIS.

Yet Gladstone's characterization remains fundamentally correct. The Act of 1937 says nothing about the functions or responsibilities of the cabinet; these rest as before upon the long-standing customs of the realm. And it is a remarkable fact that this is so, for the cabinet is the most important single piece of mechanism in the whole structure of British government. It is more important today than it ever was. Indeed it has become the pivot upon which the whole machine revolves. Without a knowledge of what this body is and does, without an understanding of its functions and responsibilities, no one can obtain anything approaching a clear picture of the British political system.

FOR A VITAL INSTITUTION.

HOW THE CABINET AROSE

Among the governmental institutions of the modern world the British cabinet is perhaps the best example of what usage can build up. The old Curia Regis of Norman times, it will be remembered, became the progenitor of the privy council, a body which gave advice to the king and helped him with the routine work of admin-

ITS EARLY DEVELOPMENT.

istration. Its members were chosen at the discretion of the monarch, and although they were often members of the nobility (and hence members of parliament) it was not essential that they should be. During the Tudor and Stuart periods the privy council developed into a powerful body and through its various committees conducted almost every branch of the national administration. Nothing was exempt from its vigilant supervision. Its members, moreover, were not responsible to parliament but to the king alone. The only way in which parliament could reach them was by impeachment and even this method was not always effective, for the king could pardon an impeached privy councillor in case of conviction.

A WHEEL WITHIN A WHEEL.

So the privy council kept growing in size and expanding its functions. With the growth of its membership and the multiplication of its committees, the council eventually became so unwieldy that it ceased to be useful as an advisory body. Its numerous members could not agree on anything without interminable debates. The rank of privy councillor, moreover, was frequently bestowed by the king as an honorary distinction upon men who rarely or never attended the council's meetings. It was natural, therefore, that the king should adopt the practice of summoning to his private consultation-room, or "cabinet," a few selected members of the council who could give him advice without long debates and too much publicity. The exact date at which this practice originated is not known; it probably began some time before outsiders learned of it. In the time of Charles II, at any rate, the cabal consisted of five members, all of whom were noblemen and close friends of the king.

THE DANBY DISMISSAL AND ITS SIGNIFICANCE.

This virtual superseding of the privy council, so far as its advisory functions were concerned, was not relished by parliament. The House of Commons looked upon it as an attempt "to introduce a tyrannical and arbitrary way of government." The Commons desired to control the royal advisers, which it could not do so long as the king chose them without public announcement and conferred with them in secret. There remained, nevertheless, the weapon of impeachment and it was by using this bludgeon that parliament eventually made good its contention that whoever gave the king advice, whether in public or in secret, should do so at his own peril if the advice turned out to be bad.

This principle was definitely established in 1679 when parliament found a way of removing one of the king's most trusted counsellors despite all that Charles II could do to save him. The adviser in question was Thomas Osborne, Earl of Danby, who held the office of lord treasurer. When the House of Commons proceeded to impeach him, the king dissolved it and ordered a new election. But the new House, when it assembled, renewed the attack. Danby pleaded that whatever he had done was by order of the king, and that the king could do no wrong. But parliament went ahead with the prosecution and sent him to imprisonment in the Tower. By so doing it definitely established the principle that no minister could shelter himself behind the legal immunities of the throne.

HOW IT CREATED A DILEMMA.

Here, then, was an anomalous situation and one that could not continue. The king had a right to choose his own advisers. No one questioned this right which had existed from time immemorial. It was his prerogative to choose men in whom he had confidence and to entrust them with the routine work of administration, this work to be done in accordance with the royal instructions. But on the other hand parliament had now made good its right to remove by impeachment any royal adviser whom it did not approve. Not only that but it might punish him for having wrongly advised the king, or for having carried out the royal instructions to the detriment of the national welfare. Surely this was a tight place for any minister to be in. If he disobeyed the instructions of the king he would be dismissed from office; if he obeyed them he might be impeached by parliament and sent to prison. No government could function under such an arrangement. Some plan of unified responsibility had to be devised.

A SOLUTION FOUND IN THE ESTABLISHMENT OF FULL PARLIAMENTARY CONTROL OVER THE CABINET.

The House of Commons had its own ideas as to how this might be done. Many years prior to Danby's dismissal it had offered a solution of the problem by declaring (in the Grand Remonstrance) that the king ought "to employ such counsellors only . . . as parliament may have cause to confide in." In other words the responsibility of the king's advisers could be unified by allowing parliament to choose them for him. But Charles I would not listen to this proposal; if he had done so he might have saved both his throne and his head. Nor was it accepted by Cromwell during his term as Lord Protector. Charles II, after the

restoration of the Stuart monarchy in 1660, also disregarded it, and so did James II during his short term on the throne. But the House of Commons continued to urge the proposition at every opportunity and in the end its insistence was rewarded. William and Mary, on their accession to the throne in 1688, conformed to the demand, and the doctrine that the king's ministers are responsible to parliament has not been seriously disputed since that time.

MEANWHILE THE PRIVY COUNCIL CONTINUED.

But let us return for a moment to the privy council. As an advisory body it was gradually supplanted by the cabinet, but it did not go out of existence. There were other things for the privy council to do, and it remains a part of the British administrative machinery today. It is still a large body, with over three hundred members. This membership is made up, in considerable part, of men who have served or are serving in the cabinet. If anyone becomes a cabinet minister he is at once made a privy councillor. When he gives up his office as minister he remains a privy councillor for life. In addition many others, who have attained eminence in political life, or as judges, or in the civil service, or in art, literature, law, or science, or in the government of the colonies, are made privy councillors by the crown as a mark of honor. This gives them the title of Right Honorable.

ITS PRESENT FUNCTIONS.

The whole membership of the privy council is never called together to transact business. Plenary sessions are called only on the occasion of some important ceremony such as the coronation of a new sovereign. On the other hand "meetings of the privy council" are frequently held, sometimes a couple of times a month. Three or four members of the cabinet, including the lord president and the clerk of the council, come together (usually at Buckingham Palace) and act in the name of the whole membership. The king often attends, although his presence is not essential. The business consists mainly of adopting orders-in-council which the cabinet has already agreed upon.[1] The privy council also maintains certain committees, the most notable of which is its judicial committee.[2]

The cabinet replaced the privy council in its advisory functions two hundred and fifty years ago, but the method of ensuring the effectiveness of parliamentary control over the cabinet was still to be

[1] For an explanation of these orders-in-council see *below*, Chapter XII.
[2] See *below*, Chapter XVII.

worked out. Prior to the Revolution of 1688 the kings had chosen their advisers from among their own intimate friends and supporters. The new monarchs began the innovation of selecting their advisers from both the major party groups in parliament. In this they intended well, their aim being to give both Whigs and Tories an equal measure of recognition.

HOW PARTY SOLIDARITY CAME INTO THE CABINET.

But this plan worked badly, as anyone might have predicted. Ministers drawn from two opposing political parties could not work together, and the friction grew more pronounced as party lines became more plainly drawn. The cabinet proved to be a house divided against itself; it could not give unanimous advice; one faction had the confidence of a majority in parliament while the other did not. As the only way out of the difficulty it was decided to choose all the ministers from the majority party, which happened at this time to be the Whigs. The cabinet of 1697, popularly known as Sunderland's *Junto*, was the first British ministry constituted on the principle that all its members should possess the confidence of the dominant party in parliament. The new practice was generally followed by Queen Anne even to the extent of having Whig ministers when her own personal sympathies were with the Tories.

Of course it takes time to establish a custom of the constitution and even at the close of Anne's reign the principle of ministerial solidarity was not beyond the possibility of an overthrow. It is entirely possible, indeed it is probable, that if Anne had been succeeded by an ambitious and firm-willed king the bipartisan cabinet system would have been restored. As it turned out, however, the situation became favorable for continuing the practice which William and Anne had begun.

George I, who succeeded Anne, was a dull-witted Hanoverian who knew nothing of English political traditions. He neither spoke nor understood the English language. The details of British domestic policy did not interest him in any way. Accordingly he abstained from presiding at meetings of his cabinet and gave this function to one of its members, Sir Robert Walpole, who thus became the first prime minister in the modern sense. There had been chief ministers of the king long before Walpole's day—Wolsey and Thomas Cromwell under Henry VIII, Burleigh under Elizabeth, Strafford under Charles I, and Clarendon under Charles II. But these chief ministers did not

THE WORK OF WALPOLE.

hold their posts by virtue of their being the recognized leaders of the dominant party in parliament.

Walpole was the first royal adviser to preside at cabinet meetings and at the same time serve as the leader of the House of Commons. He was, besides, a statesman of great competence and sagacity. For twenty years, while he held the confidence of a majority in the House of Commons, George I and George II let him govern the realm. To keep a majority on his side Walpole resorted to methods which would now be regarded as crooked; but it can at least be said that he never tried to hold his post without a parliamentary majority back of him. When, in spite of his skill and corruption, he failed to command a majority (1742), he resigned at once, and this notwithstanding the fact that he still retained the full confidence of the king.

EMERGENCE OF THE CABINET SYSTEM INTO ITS PRESENT FORM.

During his long lease of power Walpole moulded the cabinet system into the form which it retains today. He established the principle that the king, having chosen a prime minister, should leave to this minister the selection of the other ministers. He made himself the sole medium of communication, on all important matters, between the ministry and the monarch. Accepting the doctrine that the cabinet must at all times command the support of a majority in the House of Commons, he insisted that he, in turn, was entitled to his party's support. He demanded, and enforced his demand, that every Whig member of the House should stand behind the cabinet on every issue. The development of the cabinet and of the party system were thus made to proceed hand in hand. George III, when he came to the throne in 1760, made a spirited attempt to revive the personal influence of the monarch upon the course of national policy but failed.

THE SYSTEM CONTINUES TO EVOLVE.

Since the close of the eighteenth century the outlines of the British cabinet system have remained substantially unchanged, but its various features have become clarified by a series of precedents. It has become an established rule, for example, that when a prime minister resigns the entire cabinet must go out of office with him, in other words that the cabinet's responsibility is collective.[1] It has become settled, as will be explained a little later, that members of the cabinet are not only responsible to the king and to parliament, but also to one

[1] See *below*, p. 105.

another. With the steady development of the party system, moreover, the functions of the cabinet in the matter of framing the party program and transforming party pledges into laws have been given emphasis. The whole system has been shaking itself down to a stable basis; but it has done this slowly because it rests upon usage. Nor is there any reason to think that this evolution of the cabinet system has yet come to an end. It is still developing new features and through future generations will doubtless keep on doing so.

Walpole's cabinet consisted of from seven to ten active members. But as the functions of national administration widened each succeeding cabinet tended to grow larger until the membership at the close of the nineteenth century was more than twenty. Meanwhile some thirty or more additional ministers were given administrative posts although they were not members of the cabinet. In piping times of peace it was possible to do business with twenty members sitting around the cabinet table, but when the strain of the World War came upon Great Britain the size of the cabinet proved to be a hindrance to the prompt reaching of conclusions. As Lloyd George said: "You can't wage war with a Sanhedrin."

VARYING SIZE OF THE CABINET.

In 1916, therefore, a war cabinet of five (later six) members was created within the regular cabinet circle and this smaller body was given full control of Britain's war program. Of the six members only one (the chancellor of the exchequer) had any administrative duties. The rest of the directory, including the prime minister, were left free to give their energies to the prosecution of the war.[1] The plan fully justified itself and the suggestion was made that the size of the cabinet should be permanently fixed at ten or twelve members.[2] But nothing came of this proposal. In 1919 the old cabinet structure of about twenty members was quietly restored and it has since remained.

ORGANIZATION AND FUNCTIONS

HOW ITS MEMBERS ARE CHOSEN.

How is the cabinet organized, and what are its functions at the present time? Before entering upon such a discussion it may be well to define, with some precision, certain terms which Englishmen use in describing the ex-

[1] For a further discussion see John A. Fairlie's *British War Administration* (Oxford, 1919).

[2] In the *Report of the Machinery of Government Committee* of the Ministry of Reconstruction (1918), commonly known as the Haldane Report.

ecutive branch of their government. These terms are privy council, ministry, cabinet, and "the government." In theory the privy council still controls the actions of the crown. Acts of the crown are declared to be "by and with the consent of the privy council" This is because the cabinet, until very recently, has not been recognized by the constitution or the laws. Hence no one is ever officially appointed to membership in the cabinet. He is appointed a privy councillor and then summoned to cabinet meetings. The cabinet, therefore, may be defined as a body of some twenty privy councillors who have been chosen by the prime minister to assist him in his functions.

SOME PRELIMINARY EXPLANATIONS: PRIVY COUNCIL AND CABINET.

Another distinction is somewhat confusing to the outsider, namely, the distinction between the ministry and the cabinet, between ministers and cabinet ministers. All members of parliament who hold important administrative posts of a political character, and who give up such positions when a cabinet resigns, are known as ministers. In other words the ministers are the high officials of the crown who hold office subject to the continued confidence of a majority in the House of Commons. There are more than fifty ministers but only about twenty cabinet ministers.[1] The ministry does not meet as a body for the transaction of business. It has no collective functions. It is only the cabinet ministers who meet.

MINISTERS AND CABINET MINISTERS.

The duties of a minister (unless he is a cabinet minister) are individual duties only. He may be the head of a minor department (the heads of most major departments are in the cabinet), or more often he is an aide to a major department head, that is, an undersecretary, or a parliamentary secretary. Certain ministers also serve as "whips" of the majority party in the House of Commons.[2]

AN ANALOGY.

So the broad distinction between ministers and cabinet ministers in Great Britain may be illuminated for American readers, perhaps, by reference to the government of the United States where the President, on coming into office, appoints a considerable number of higher administrative officials who ordinarily go out of office when his term expires. These include not only the ten members of the

[1] The postmaster-general and the attorney-general, for example, are ministers but not members of the cabinet

[2] The functions of the parliamentary "whips" are explained *below*, Chapter XIII.

President's cabinet who are heads of departments but a much larger number of assistant secretaries in the state, war, navy, treasury, and other departments, together with heads of various boards and commissions. In the United States there is no term that accurately designates this entire body of cabinet members plus other high officials, but the group corresponds roughly to what Englishmen call "the ministry."

The cabinet is the smallest of the three groups and the only one that has a collective responsibility. It is composed of those ministers whom the prime minister designates to membership in his cabinet, but the prime minister in making his designations is guided largely by precedent. Some high ministerial posts are always of cabinet rank (for example, the headship of the foreign office, the home office, the war office, and so on); while some less important ones invariably are not. There are a few which may or may not be of cabinet status as the prime minister decides. For he is head of both ministry and cabinet.

A DEFINITION OF THE CABINET.

Finally there is "the government," a term which Englishmen use in a sense unfamiliar to outsiders. When they speak of a change in the government, or a change of government, for example, they do not mean a change in the form of government. When they say that "the government is likely to fall" they do not mean that the monarchical system is about to be supplanted by something else. By "the government" they mean the executive authorities who are in control for the time being—namely, the prime minister and his ministerial colleagues. It is they who are responsible for the passage of "government measures" by parliament. The term most nearly analogous in America is "the administration," which is somewhat loosely used to include the President, the members of his cabinet, their assistants, and all others who would go out of office with a change in the presidency.

THE MINISTERS AND "THE GOVERNMENT."

The prime minister, as has been said, is head of the ministry, the cabinet, and "the government." The king goes through the gesture of selecting this official, but he has very little discretion in making the choice. He summons, and by usage must appoint, the leader of that political party which controls a majority in the House of Commons. If no single party controls a majority he calls upon some leader who can form a coalition or otherwise assure

THE PRIME MINISTER:

HOW HE IS CHOSEN.

himself of a majority on important measures. Under the two-party system, which prevailed in England for many generations, the king's task was very simple. When a prime minister resigned by reason of a defeat at the polls or on the floor of the House, the monarch merely sent for the leader of the victors and invited him to assume office.

But when three political parties are represented in the House, with no one of them controlling a majority, the royal function is not so simple. The king must then use his own judgment as to which leader he will summon. The main thing is that whoever takes office as prime minister shall be able to command a majority. If he can do this from within the ranks of his own party so much the better. If he cannot, then he must secure it by some coalition, compromise, or understanding with one of the other parties. When Mr. Ramsay MacDonald was invited to become prime minister in 1928 the Labor party did not control a majority in the House. But before taking office he satisfied himself that a sufficient number of Liberals would support him as against the Conservatives and thus enable him to carry on the government.

In any event the prime minister is always chosen from among the two party leaders, or the three party leaders, as the case may be. It is inconceivable that anyone other than a recognized leader would be called upon. In 1922, when Mr. Lloyd George tendered his resignation, there was no recognized leadership in the ranks of the Conservatives. The king sent for Mr. Bonar Law who agreed to accept the post of prime minister in case the Conservative party should formally designate him as its leader, which it did. Again, in 1923, the king sent for Stanley Baldwin, on Bonar Law's retirement, and offered him the post of prime minister, but only after having consulted with prominent members of the party and making sure that the choice would be acceptable. Each political party determines for itself the methods by which its own leader is chosen. Ordinarily, however, the selection is made by a caucus which is attended by the party's membership in the House of Commons along with various other prominent party workers.

HE IS ALWAYS A PARTY LEADER.

During the two hundred and sixteen years, 1722–1938, Great Britain had forty prime ministers. This is in sharp contrast with the experience of France which has had a larger number of prime ministers in one quarter of the time. These forty prime ministers of

Great Britain, from Sir Robert Walpole to Neville Chamberlain, headed fifty-eight cabinets.[1] Thirteen British premiers held the office twice; two of them three times; and one (Gladstone) was prime minister four times. Thus each English ministry has remained in power for less than four years on the whole, and the forty prime ministers have averaged less than six years in office.

WHO THE PRIME MINISTERS HAVE BEEN.

While any British subject is eligible to the premiership it is significant that twenty-eight of the forty were Englishmen by birth. Six were Scotchmen, three Irishmen, one a Welshman, one a Canadian, and one (Disraeli) was of foreign extraction but of English birth. Twenty-five were peers or sons of peers, and all except three or four were men of considerable wealth. It is worth remarking that thirty-three out of the forty were university graduates—almost all of them from Oxford or Cambridge. This is striking evidence of the prominent part which the two oldest universities of England have taken in the public life of the nation.

BIRTH AND EDUCATION.

Nearly all the prime ministers went into public life at an early age; eleven became members of parliament at twenty-one, and the average for the entire list is about twenty-five. No such precocity in politics has been shown by the presidents of the United States. The average age for becoming prime minister, however, is about fifty, which indicates that the office has demanded a considerable apprenticeship. There have been notable exceptions, of course, as in the case of the two Pitts; but for the most part the younger politicians have had to bide their time. As for their party affiliations, twenty-one prime ministers were Whigs or Liberals, while only seventeen were Tories, Conservatives, or Unionists. One premier, the Duke of Portland, happens to fall in both categories; for he held office twice, first as a Whig and later as a Tory. And Britain has had one prime minister from the Labor party.

AGE AND POLITICAL LEANINGS.

Very few British prime ministers have had any vocation but politics. One was a soldier, one a captain of industry, and several were practicing barristers. But not all of these were dependent upon their own earnings for a livelihood. Some had long political ca-

[1] Most of the data upon which this and the next two paragraphs are based has been taken from the Hon. Clive Bigham's volume on *The Prime Ministers of Britain* (New York, 1922).

reers. The Duke of Newcastle, for example, was continuously in one office or another for forty-six years, while Lord Palmerston was on the public payroll for forty-seven. Gladstone was alternately in and out of office during more than half a century. Tenure of the prime ministership does not seem to have cut men's lives short, for their average longevity (omitting those still living) exactly coincides with the Psalmist's span of three score and ten. Six of them attained the age of eighty.

VOCATIONS AND LENGTH OF SERVICE.

More than forty years ago Mr. James Bryce (afterwards Lord Bryce) wrote an illuminating chapter on "Why great men are not chosen Presidents." In it he propounded the query why the chief executive office in the United States had not been more often filled by great and striking men. He pointed out that among the twenty-one presidents who had held this office during the century following the inauguration of Washington, only a half dozen or so were statesmen of great or striking merit. Washington, Jefferson, Madison, Jackson, Lincoln, Grant, and Cleveland were about the only chief executives of the United States who could properly be rated in 1888 as statesmen of the first rank. It is a fair assertion that more than half the presidents during the first century of the Republic were men who would now be entirely forgotten were it not for the fact that they once held the highest office in the gift of the American people.

PRIME MINISTERS AND PRESIDENTS COMPARED.

But the presidency of the United States has not been unique in its frequent appeal to mediocrity. On the roll of the English prime ministers one can also find a fair proportion of second-rate statesmen. Among the various prime ministers from Walpole to Chamberlain there are hardly more than half a dozen who meet the standard which Lord Bryce set up in relation to the American presidency. Walpole, the two Pitts, Peel, Palmerston, Disraeli, and Gladstone exhaust the list. Possibly Canning, Salisbury, and MacDonald might be added. But North, Newcastle, Grenville, Rockingham, Liverpool, and Campbell-Bannerman—they were neither more able nor more striking in personality than Fillmore, Buchanan, Arthur, or Harding. The Duke of Wellington was a valiant soldier; so was Grant; but the one proved no better than the other when entrusted with the responsibilities of high civil office. There have been great men in both positions, and men of mediocre attainments too. The

BIG AND LITTLE STATESMEN.

theme is one on which several pages might be written, but this is not the place for it.

At any rate the king chooses the prime minister, and the latter proceeds to select both the ministers and the cabinet ministers.

HOW THE PRIME MINISTER SELECTS HIS CABINET.

Ostensibly he has a free hand in making his selections, but there are various considerations of a practical nature which he must take into account. If a new prime minister were to regard nothing but his own personal preferences in constructing a ministry, he would make trouble in the ranks of his supporters. He must see that various interests are represented. For example, he cannot select all the members of his ministry from the House of Commons, taking none from the House of Lords.[1] Both peers and commoners have figured in every British ministry for two hundred years; but the proportion from the House of Commons has been steadily increasing.[2] Lords have naturally been more numerous in Conservative than in Liberal or Labor cabinets.

MINISTERS MUST BE MEMBERS OF PARLIAMENT.

Every minister of the crown must be a member of parliament, of one House or the other. But this does not mean that he must be a member of parliament at the time of his appointment. Sometimes he becomes a member after his appointment to the ministry. This can be arranged, of course, by making him a peer and thereby giving him a seat in the House of Lords, but the more usual procedure is to "open a constituency" by inducing some member of the House of Commons to vacate his seat and make way for the newly appointed minister. This entails a special election (or by-election) to fill the vacancy, and the newly appointed minister becomes a candidate at this by-election.

He can do this the more easily because neither law nor custom in Great Britain requires that a candidate for the House of Commons shall live in the constituency which he seeks to represent. When, therefore, a prime minister desires to include some outsider in his ministry he arranges that a vacancy shall be created in a safe con-

[1] There is a statutory provision which virtually requires that both Houses shall be represented in the cabinet. It prohibits more than five principal secretaries of state and five undersecretaries from sitting in one House at the same time.

[2] In the first cabinet of George III, no fewer than thirteen of the fourteen members were peers. It was not until after the Reform Act of 1832 that commoners began to get an equal share of representation in the ministry. Since that time they have usually constituted half or more than half the cabinet.

stituency. The member who gives up his seat is sometimes rewarded for his generosity by being made a peer, or given some dignified office which does not necessitate his sitting in parliament. The newly appointed minister goes to the scene of the by-election, gets himself nominated, and is usually elected. The prime minister so arranges it with the party organization. But the plans sometimes miscarry and the constituency does not turn out to be so "safe" as was assumed.

THE OLD RULE AS TO VACATING A SEAT ON APPOINTMENT TO THE MINISTRY.

Until a few years ago it was a rule that any member of the House of Commons who accepted a ministerial post thereby vacated his seat and had to go back to his constituency for reëlection. The origin of this rule is interesting. Back in the days when the kings of England took an active part in politics it was their practice to seek control of the House of Commons by appointing various influential members to offices of honor and profit in the gift of the crown. This constituted a species of refined bribery. The member of parliament took the king's bounty, became obligated to him, and thereafter voted with the king's friends. But parliament grew resentful of this practice and eventually undertook to get rid of it by passing a statute which provided that any member of the House of Commons who accepted a position of profit from the crown should thereby lose his seat.[1]

THE NEW PROVISION.

As this statute applied to newly appointed ministers as well as to other officials of the crown, it involved a serious interference with the course of public business. For whenever a new ministry took office it became necessary for several of them (those who were members of the House of Commons) to go back to their respective constituencies and get themselves reelected. And this even though they had been elected to the House only a few days before. The requirement was suspended by act of parliament during the World War, and in 1926 it was abolished altogether.

In forming his cabinet the prime minister must also have regard for geography. It would be a grave offense to choose only Englishmen, Scotchmen, or Welshmen. Sentiment and tradition demand that recognition shall be given to the various parts of the United Kingdom. As a matter of good politics the prime minister must strive to make his cabinet as broadly representative as possible

—having regard to sectional, social, religious, and economic diversification as well as to his own personal preferences. This high-grade patronage, for such it is, must be distributed in such a way as to strengthen the prime minister's party or coalition of parties. It is an unwritten law of British politics, however, that men who have served in previous ministries of the same political party must be offered ministerial posts if they are still in active political life. Likewise it is understood, quite naturally, that the men who have been the most effective parliamentary critics of an outgoing cabinet are entitled to places in the incoming one. And recognition must of course be given to different factions in the party if there are such, as is often the case. This, as may readily be seen, sometimes leads to embarrassment, for it occasionally happens that one prominent member of parliament refuses to enter the ministry unless another is kept out.

OTHER CONSIDERATIONS WHICH INFLUENCE THE PRIME MINISTER IN MAKING HIS SELECTIONS.

All in all, the process of making a new ministry gives opportunity for the exercise of all the tactical skill that a new prime minister can command.[1] For he has only a limited number of ministerial offices to pass around - with an almost unlimited number of receptive souls waiting for a call to serve their country. So every ministry is to some extent a compromise. Never does it represent exactly what the prime minister would do if he had a free hand. His problem is to select from among the availables those who he thinks can be woven into a unit. As one commentator has said, he is like a child trying to construct a figure out of blocks which are too numerous for the purpose and which are not of shapes or sizes to fit perfectly together.

EVERY MINISTRY IS TO SOME EXTENT A COMPROMISE

Nor are the prime minister's worries confined to the problem of determining who shall be included in the ministry. The distribution of offices, or portfolios as they are called, must also be made among those who are taken in. Who shall be made chancellor of the exchequer or secretary of state for foreign affairs,—the two most important positions in the cabinet? And what ministers will have to be content with a designation as junior lord of the treasury, civil lord of the admiralty, or charity commissioner? In deciding such questions

DISTRIBUTING THE PORTFOLIOS.

[1] See the interesting chapter on "The Formation of a Government" in W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936), pp. 47–69.

the prime minister takes into account each minister's experience, his skill as an administrator, and his ability to hold his own in parliament whenever the work of his department is criticized by the opposition, as it is bound to be. Some heed must also be paid to each minister's own preferences, especially in the case of those who are to occupy the higher positions.

Must the prime minister also take into account the wishes of the king in choosing his ministerial associates and assigning them their offices? Under ordinary conditions the answer is *No*. It is hardly conceivable that a British king would nowadays decline to accept anyone whom his prime minister insisted upon having in his cabinet. But it has not always been so. Queen Victoria on one occasion criticized a prime minister's selections and is believed to have successfully objected to the inclusion of certain statesmen who were distasteful to her. She claimed, and exercised, a woman's privilege. Today a monarch would be very loath to inject his own personal feelings into the process of cabinet-making.

HAS THE MONARCH ANY INFLUENCE UPON THE SELECTIONS?

The size of the cabinet is not fixed by law but by usage. Such ministerial posts as those occupied by the chancellor of the exchequer, the lord chancellor, the first lord of the admiralty, the minister of health, the president of the board of trade, and the secretaries of state for foreign affairs, for war, for India, for the dominions, for the colonies, and for the home department—these regularly carry cabinet rank with them. Other portfolios, such as those held by the secretary of state for Scotland, the secretary of state for air (i.e., military and naval air forces), the minister of transport, and the minister of labor are usually but not always included, while some others such as the postmaster-general and the first commissioner of works are occasionally brought in.[1] The remaining ministers (including under-secretaries and parliamentary secretaries) are left out although there is nothing to prevent their being summoned to cabinet meet-

WHAT MINISTERS CONSTITUTE THE CABINET.

[1] The following ministers constitute the cabinet at the present time: Prime Minister and First Lord of the Treasury, Lord Privy Seal, Lord President of the Council, Lord Chancellor, Chancellor of the Exchequer, the principal Secretaries of State, viz.: Foreign Affairs, Home Affairs, War, Dominions, Colonies, Scotland, India, and Air, First Lord of the Admiralty, President of the Board of Trade, Minister of Health, President of the Board of Education, Minister of Agriculture and Fisheries, Minister of Labor, Minister of Transport, and Minister of the Coördination of Defense.

ings if the prime minister at any time desires their presence.[1]

Under normal circumstances all the ministers are drawn from one political party—the dominant party in the House of Commons.

COALITION CABINETS.

For over two hundred years prior to 1915 every ministry was constituted in that way. But during the critical years of the World War it was deemed advisable to place the ministry on a coalition basis by taking members from all three political parties. And since 1931 the practice has again been followed by the MacDonald, Baldwin, and Chamberlain ministries. All three have been coalition ministries, but with a preponderance of members drawn from the Conservative ranks.

HISTORICAL BACKGROUND. On the origin and growth of the privy council, the ministry, and the cabinet there is much material in J. F. Baldwin, *The King's Council in England during the Middle Ages* (New York, 1913), A. V. Dicey, *The Privy Council* (London, 1887), Edward R. Turner, *The Cabinet Council of England in the Seventeenth and Eighteenth Centuries, 1622–1781* (Baltimore, 1932), and Mary T. Blauvelt, *The Development of Cabinet Government in England* (New York, 1902). The various books relating to the history, powers, and functions of the crown, listed at the close of the preceding chapter, deal with the evolution of the royal advisory bodies.

PRIME MINISTERS AND THE PROCESS OF CABINET-MAKING. Strange to say, no book has yet been written on the office of prime minister in Great Britain, its origin, development, and present-day influence. But Clive Bigham, *The Prime Ministers of Britain* (New York, 1922), and F. J. C. Hearnshaw, *British Prime Ministers of the Nineteenth Century* (London, 1930) provide an informing and readable series of biographical sketches. Mention should also be made of the last-named author's book on *The Political Principles of Some Notable Prime Ministers of the Nineteenth Century* (London, 1930). The process of cabinet-making is described in W. R. Anson, *Law and Custom of the Constitution* (4th edition, 2 vols., London, 1922–1935), Vol. II, Part I, pp. 108–150, Herman Finer, *The Theory and Practice of Modern Government* (2 vols., New York, 1932), Vol. II, pp. 949–994, and W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936).

BIOGRAPHIES AND MEMOIRS. Illuminating material may also be drawn from the biographies and memoirs of recent prime ministers,—for example, W. F. Monypenny and G. E. Buckle, *Life of Benjamin Disraeli* (6 vols., London, 1910–1920), John Morley, *Life of W. E. Gladstone* (3 vols., New York, 1903), Lady Gwendolen Cecil, *Life of Robert, Marquis of Salisbury* (2 vols.,

[1] All ministers, whether members of the cabinet or not, receive substantial salaries. These salaries are voted by parliament each year and may be reduced at any time.

London, 1921), E. T. Raymond, *Life of Lord Rosebery* (London, 1923), J. A. Spender and C. Asquith, *Life of Lord Oxford and Asquith* (2 vols., London, 1932), H. H. Asquith, *Fifty Years of Parliament* (2 vols., London, 1926), and his *Memoirs and Reflections* (London, 1928), Harold Spender, *The Prime Minister: Life and Times of David Lloyd George* (London, 1920), and H. H. Tiltman, *James Ramsay MacDonald* (London, 1931).

CHAPTER VI

CABINET FUNCTIONS AND RESPONSIBILITY

The first duty of a government is to live. It has no right to be a government at all unless it is convinced that if it fell the country would go to everlasting smash. —*Arnold Bennett.*

THE HEIR TO POWER

During the past half century the functions of government have been rapidly multiplying. There is more work to be done than there used to be. This has greatly increased the powers and influence of the administrative authorities, those whose duty it is to carry out the will of the people as expressed by the legislative body,—in other words the ministers and their subordinates. As a result of this the importance of the cabinet in the governmental system is not easy to overestimate. Englishmen refer to it as "the buckle that binds" all arms of the government together. It has been called the keystone of the political arch and the helm of the ship of state. There is difficulty in finding a metaphor that will do it full justice.

GENERAL FUNCTIONS OF THE CABINET.

In discussing the work of the British cabinet a distinction should be made between individual and collective functions. Each member of the cabinet is responsible for the conduct of some branch of the national administration. These branches of administration correspond, for the most part, to the departments which are headed by members of the President's cabinet in the United States. Then, in a collective sense, the members of the cabinet form the great executive committee of parliament. They prepare its business, guide its deliberations, and keep it at all times under control.

THE PRIME MINISTER'S PRIMACY.

Both classes of functions are performed by the cabinet under the direction of the prime minister. He is supposed to exercise a general supervision over the work of his twenty colleagues. He is the umpire in the case of any differences of opinion among them. When he and one of his ministers find themselves unable to agree, it is the minister who resigns. On the other hand the prime minister cannot ride roughshod over his col-

leagues. He is their leader, not their boss. He must carry them with him, for they have friends in the House of Commons and dissension in the cabinet would soon spread to that chamber. Yet his power is enormous—so long as he remains prime minister. On his advice the royal prerogative lives and acts as powerfully as it did in the days of the Tudors. In theory a prime minister has no right to tell the home secretary or the postmaster-general that this or the other thing must be done. But he can advise the crown to dismiss any minister and select a new one. And he can do this very delicately by writing, as a prime minister once did to Charles James Fox, that "the king has been pleased to issue a new commission for the office of lord high treasurer in which I do not perceive your name." As a rule, of course, he does not have to go so far. Difficulties can usually be ironed out before resignations are in order.

THE CHANCELLOR OF THE EXCHEQUER.

Next to the prime minister the chancellor of the exchequer is the most conspicuous member of the cabinet. Public administration is largely a matter of opening or closing the public purse, and the chancellor is the real head of the British treasury although nominally this institution is controlled by a treasury board of five members.[1] This board, however, is one of the numerous shams in British administration. It never meets, or virtually never. Almost all its functions are turned over to the chancellor of the exchequer. His duties include practically all those which pertain to the secretary of the treasury at Washington, and more besides. He has charge of collecting the revenues and of paying out all funds appropriated by parliament. He has various duties connected with the currency and the government's relations with the Bank of England.

HIS WORK ON THE BUDGET.

In addition he prepares the annual budget. This huge array of figures is laid before the cabinet and after approval by that body is submitted to the House of Commons. The chancellor of the exchequer is always a member of this House because every financial measure, including the budget, must be first considered there. In connection with the introduction of the budget the chancellor of the exchequer makes his annual "budget speech" which sets forth any changes in the financial plans of the government. It is from this speech that the public gets its

[1] The first lord of the treasury (who is usually the prime minister), the chancellor, and three junior lords. For a full account of the treasury, its organization and workings, see T. L. Heath, *The Treasury* (London, 1927).

first information concerning new taxes and other proposed changes in the government's fiscal policy. Hence the chancellor of the exchequer must needs be a clear, ready, and fluent speaker, able to hold his own on the floor. This is even more important than a knowledge of public finance, for the chancellor can obtain from his subordinates all the expert advice that he may require in financial technique.

The chancellor of the exchequer should not be confused with the lord chancellor. The lord chancellor of Great Britain occupies a post which has no close analogy in the United States. He presides in the House of Lords and is usually a member of that body. This does not mean that a commoner can never be chosen to the office; any British subject may be chosen and then raised to the peerage. Indeed he could preside as lord chancellor without being made a peer. The post of lord chancellor is the highest office in the British judicial system, for its incumbent is the titular head of the Court of Appeal, although in practice he rarely sits there. But he does actually preside at sessions of the law lords when they exercise the judicial functions of the House of Lords.[1] He also recommends to the crown the appointment of judges in the higher courts and himself appoints the justices in the lower tribunals. To that extent he performs duties which are somewhat analogous to those of the attorney-general in the United States.

THE LORD CHANCELLOR.

One reads in commentaries on British government that the cabinet contains several secretaries of state.[2] That statement is literally true, but it is apt to create a misleading impression in an American mind. The British cabinet does not contain several secretaries of state in the American sense. It is merely that the term secretary of state forms part of the title in the case of several principal ministers whose functions cover a varied range.

THE "PRINCIPAL SECRETARIES OF STATE":

First, there is the secretary of state for foreign affairs. This minister is head of the British foreign office.[3] As such he is the official adviser of the crown in its dealings with foreign powers; he supervises the conduct of all diplomatic relations, negotiates treaties, and recommends appointments in the diplomatic service. His duties correspond in a general way

1. FOREIGN AFFAIRS.

[1] See *below*, Chapter XVII.

[2] The secretaries of state for Foreign Affairs, for the Home Department, for War, for Scotland, for the Dominions, for the Colonies, for India, and for Air.

[3] J. Tilley and S. Gaselee, *The Foreign Office* (London, 1933).

to those of the secretary of state at Washington. Due to the vastness and complexity of Great Britain's foreign interests the position of secretary of state for foreign affairs is one of great importance, so much so that the prime minister has occasionally taken this portfolio into his own hands. But the British foreign secretary is not, like the American secretary of state, the ranking member of the cabinet.

2. WAR.

The secretary of state for war occupies a post which exists in all countries, and with substantially similar functions.[1] His department has general supervision over the land forces of the kingdom. The air service is not under his control but is committed to the care of a separate department. On the other hand, and somewhat curiously, there is no secretary of state for the navy—although the navy has traditionally been England's first line of defense. Naval affairs are under the supervision of an admiralty board (the successor to the lord high admiral of bygone days). This board is made up of a first lord of the admiralty, four or more sea lords who are regular naval officers of high rank, one civil lord, and various secretaries.[2] In the deliberations of this board, however, the influence of the first lord of the admiralty is virtually controlling. And it ought to be, for he shoulders the entire responsibility to parliament for every action of the admiralty board.

3. AIR.

The secretary of state for air occupies a post that was created in 1917. Before the World War the air forces of Britain were divided between the army and the navy, as they still are in the United States. Coöperation between the two was arranged through a joint air committee which in 1916 became a regular board with a president at its head. This, in turn, gave way to an air council of which the secretary of state for air is now the controlling head. It has supervision over civil aviation as well as over the royal air force. Close coöperation between the war office, the admiralty, and the air ministry is secured by a joint committee of imperial defense.

4. HOME AFFAIRS.

The other principal secretaries have departments which find no close analogy in the American scheme of national administration. The secretary of state for the home department, or home secretary as he is more commonly called, has to do with many matters of domestic administration, such as the receiving of petitions for presentation to the crown, the maintenance of peace and order within the kingdom, the enforcement of

[1] H. Gordon, *The War Office* (London, 1935).
[2] G. Aston, *The Navy of Today* (London, 1927).

factory laws, the inspection of municipal police in the boroughs or cities, the direct control of the London metropolitan police, the naturalization of aliens, and the supervision of prisons. He also has general charge of the registration of voters and the holding of parliamentary elections. Finally, the home secretary advises the crown in the exercise of its pardoning power.[1]

5. DOMINIONS, COLONIES, AND INDIA.

The secretary of state for the colonies has charge of the relations between the home government and the governments of the various colonies. Until 1925 the colonial office had to do with the self-governing dominions as well, but in that year a separate office, the dominions office, was created to deal with them. The headships of both the colonial office and the dominions office were combined in the same secretary of state until 1930 when they were separated. The cabinet now contains both a secretary for the dominions and a secretary for the colonies.[2] The relations between London and the governments of Canada, Australia, South Africa, and New Zealand are carried on through the dominions office. Jamaica, Malta, Hongkong, and the rest are dealt with through the colonial office. India is under the supervision of a separate department, the India office, headed by a secretary of state for India whose duties will be explained later.[3] There is also a secretary for Scotland, and since 1926 he has ranked as a principal secretary of state.

OTHER CABINET MINISTERS.

There is no unified department of justice in Great Britain, as in continental countries. The work is divided among four ministers, namely, the lord chancellor, the home secretary, the attorney-general, and his colleague, the solicitor-general. The duties of the other ministers, such as the ministers of labor, health, and transport, the president of the board of education and the board of trade, the minister of agriculture and fisheries, and the lord president of the council, are indicated by the designations of their respective offices, save in the case of the minister of health.[4] His administrative duties are concerned not only with

[1] For a full account of home office activities see the monograph by E. Troup *The Home Office*, (London, 1925).

[2] G. V. Feddes, *The Dominions and Colonial Offices* (London, 1926).

[3] See *below*, Chapter XX

[4] The Whitehall Series of monographs on the British ministerial departments is intended to explain in detail the work of each—for example, H. L. Smith, *The Board of Trade* (London, 1928), F. Floud, *The Ministry of Agriculture and Fisheries* (London, 1927), L. A. Selby-Bigge, *The Board of Education* (London, 1927), etc.

the maintenance of the public health but with the supervision of poor relief and local government. His office took over, in 1919, the functions which had previously been performed by the local government board.[1]

THE ANCILLARY AGENCIES

In the United States the expansion of governmental administrative functions during recent years has resulted in the creation of numerous boards, commissions, and "administrations" which are not under the control of any of the regular departments. As will be seen a little later, the same is true in Great Britain, but to a much smaller extent. Most of the new activities undertaken by the British government have been allotted to the existing ministries (labor, health, transport, etc.). The local trade boards and employment exchanges, for example, have been placed under the ministry of labor. But the government has also assumed responsibility for the systematic organization of electricity supply throughout the country, and it has taken under its wing a monopoly of radio broadcasting, both of which activities have not been placed under any regular department but are handled by special authorities.

A CONFUSION OF RANKS, TITLES, AND OFFICES

Taking it as a whole there is neither symmetry nor logic in the British system of national administration. Various parts of it are the outcome of a long development. Other parts are the result of the vast and rapid increase in governmental activities during recent years. There are phantom boards which have no real power and there are boards which have immense authority. An American, accustomed to an administrative organization that can be charted on a blueprint, stands amazed at this welter of first lords and junior lords, principal secretaries, and secretaries who are heads of their offices but do not rank as principal secretaries, chancellors, and presidents of boards, ministers of this and that, lords privy seal, and commissioners. But the machinery functions, and on the whole it functions well. From time to time proposals have been made to overhaul and simplify it; but nothing save piecemeal reorganization has resulted.

THE CABINET AS A COLLECTIVE ORGAN.

So much for the cabinet ministers as responsible individual administrators, as heads of their various departments. As has already been indicated they also form a body, a cabinet, with collective functions and responsibility. This cabinet, as British writers often tell us, is the pivot on which

[1] See *below*, Chapter XVIII.

the whole political machinery turns. It makes the great decisions. Technically it is merely a committee of the privy council, made up of those privy councillors whom the prime minister chooses to call, assembling at his behest, and discussing only such business as he may permit to come before it. Actually it is the steering wheel of the ship of state. It sets the direction of national policy. In theory it is responsible to the House of Commons for everything that it does; but in reality the House acts in accordance with its leadership and direction.

CABINET MEETINGS.

Regular meetings of the cabinet are held once a week or oftener in normal times, usually in the morning or early afternoon hours. Special meetings are convened at the call of the prime minister, and when serious emergencies arise they are held at any hour of the day or night, often on very short notice. It is customary for the cabinet to omit its regular meetings during the parliamentary recess, the members coming together only when needed. The meetings ordinarily take place at the prime minister's official residence, No. 10 Downing Street, or occasionally in the prime minister's room at the House of Commons. There is no fixed quorum; no votes are taken, and no speeches made. The proceedings are quite informal.

CABINET COMMITTEES.

Members do not sit in any order of precedence; each picks his own seat and occupies it regularly. Smoking at cabinet meetings is strictly tabooed, and some ministers have looked upon this as a rough deprivation. Before each regular meeting a batch of papers relating to the business is sent to each member. An important innovation of post-war days is the frequent holding of committee meetings at which committees of the cabinet deal with special subjects or groups of subjects. Two committees have now become relatively permanent—one on home affairs and the other on finance. These cabinet committees, of course, have no final powers. They merely report to the whole body. A considerable amount of business is also virtually settled by private conferences between the prime minister and a few of the more influential members before the cabinet meets. It is a tradition, moreover, that the prime minister never consults the cabinet about filling a vacancy in its own ranks, and rarely does he do it about other appointments—for example, to judgeships or governorships of colonies.

Prior to 1917 the cabinet had no secretary and kept no records.

This curious omission had continued from the earlier days when the cabinet was a mere clique of the privy council meeting secretly. The prime minister simply jotted down some notes of the proceedings for his own use or for the information of the king. Each member of the cabinet made mental note of matters relating to his own department, for it was an inflexible rule that no one except the prime minister should make any written memoranda at cabinet meetings. The result was that misunderstandings occasionally arose through differences in ministerial recollections of what had been decided. David Lloyd George, who was prime minister in 1917, thought this whole arrangement too loose and unbusinesslike; so he appointed a regular cabinet secretary with the function of putting business into shape for the meetings, keeping the records, and having the custody of all official documents. This secretarial establishment was rapidly enlarged until within five years it had grown to have more than a hundred employees and its expansion evoked much adverse criticism in parliament.

THE SECRETARIAT

When the Bonar Law ministry came into office (1922) the secretariat was greatly reduced in personnel; but it still remains in existence and has apparently become a permanent part of the governmental machine. Its functions and powers have never been defined, but in general it prepares the agenda for cabinet meetings, gathers data for the cabinet and its committees, keeps the records, and does whatever else the cabinet asks it to do. The head of the secretariat, or his principal assistant secretary, attends cabinet meetings and takes the minutes, but these minutes are not made public. In all respects other than in secretarial service the cabinet holds to its traditional informality.

ITS PRESENT FUNCTIONS

Most of the cabinet discussions pertain to matters of general policy or to questions which involve the establishment of some important precedent. Routine details which relate to a single department are not usually laid before it. Each minister is supposed to deal with such things on his own responsibility or after conference with the prime minister alone. A cabinet discussion is not followed by a vote save in very exceptional instances. It does not bind the prime minister. He can advise the crown in the face of an adverse cabinet vote and has done so on more than one occasion.

CABINET DISCUSSIONS.

On the other hand a prime minister naturally hesitates to act in

the face of cabinet disapproval. The recognition of the Southern Confederacy during the American Civil War was averted by a majority vote of the cabinet against the wishes of the prime minister, the foreign secretary, and the chancellor of the exchequer (Palmerston, Russell, and Gladstone—surely a weighty trio). If a cabinet discussion discloses a marked difference of opinion among the ministers, the usual practice is to leave the question open until some compromise can be reached, for the action of the cabinet, whatever it is, must be outwardly unanimous. No divided counsel can be tendered to the king, nor can the cabinet go before parliament with a division in its ranks. It must act as a unit. If any member, after a decision has been reached, feels that he cannot support this outcome, it is his duty to resign and make way for someone who feels differently. For solidarity is essential to the effectiveness of the cabinet's leadership in parliament. On rare occasions, however, it has been announced that one or more members of a coalition cabinet differed from their colleagues upon some highly controversial question but would continue in office notwithstanding. This is possible where the issue is not a vital one.[1]

THE CABINET'S LEADERSHIP IN LEGISLATION.

The most important collective function of the cabinet is to formulate the policy of the nation and the legislative program for each session of parliament. The various items in this program are then introduced as government measures with the prestige of the ministry behind them. Not only this but the measures are advocated, explained, and defended upon the floors of both chambers by members of the ministry, and the votes of the party majority are whipped into line to put them through. Not all bills are brought before parliament by the cabinet, of course; but practically all measures of general importance must come up through this channel or they have virtually no chance of being passed.

So, when the British prime minister or a member of his ministry announces that some change in the currency or banking system will be made, or a new tax levied, or a new office established, or some additional battleships built—this announcement means that such action is almost certain to be taken. If the ministers do not change their minds, or decide to compromise, parliament must either accept

[1] For an illustration of this "agree to disagree" procedure see N. L. Hill and H. W. Stoke, *The Background of European Governments* (New York, 1935), pp. 58–64.

their decision or get a new ministry. Sometimes, of course, the ministers temper their demands, or even reverse themselves, when they find more opposition than they expected. A good example was afforded by Foreign Secretary Sir Samuel Hoare's proposed olive-branch to Italy (1935) in connection with her Ethiopian venture. Apparently it had been endorsed by the cabinet, but when the storm of parliamentary opinion broke it retreated and left Hoare out on a limb. He generously helped the cabinet save its face by voluntarily tendering his own resignation as one of its members.

ITS CONTRAST WITH THE AMERICAN CABINET IN THIS RESPECT.

Right here, in fact, is the most conspicuous difference between the English and the American methods of lawmaking. In the United States the cabinet does not have any official responsibility for the preparation of government measures, and indeed Congress is disposed to resent being told by the executive what it ought to do. It objects to "must" legislation even though members supporting the administration do not always voice their resentment openly. Members of the American cabinet do not sit in either house of Congress and hence cannot direct the debates as the English ministers do. They have no certain assurance that a majority in Congress will stand behind anything that they propose.

But in Great Britain virtually all important legislation is planned and drafted by the ministers, introduced by them, and put through the House of Commons at their insistence. This does not mean, however, that the British system is superior to the American. Both methods have their merits and their shortcomings. The British plan makes for firm and effective leadership, but it also results in a good deal of legislative dictatorship. It enables a few ministers of the crown to put laws on the statute book which parliament at times would not favor if it felt free to make its own choice.[1] The American plan occasionally results in rebuffs to the executive (as when Congress in 1937 refused to accept President Franklin Roosevelt's proposal to "reform" the United States Supreme Court). Sometimes, however, the American procedure leads not only to executive rebuffs but to delays and unsatisfactory compromises; on the other hand it has the merit of providing a safeguard against executive aggrandizement.

[1] On this point see the discussion of "Cabinet Dictatorship" in Sidney and Beatrice Webb, *Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), pp. 71–74; also Lord Hewart, *The New Despotism* (New York, 1929), especially chap. vi.

MINISTERIAL RESPONSIBILITY.

Much has been written about ministerial responsibility as it exists in British government. No principle is more firmly established and none is of more far-reaching importance. It is not a simple principle, easy to understand, for it has a threefold application:

ITS THREE PHASES:

1. RESPONSIBILITY TO THE KING.

First of all, the English ministers are responsible to the king. This is, for the most part, a merely technical responsibility. The king cannot dismiss a member of the cabinet in the way that the President of the United States can do it. An English minister, so long as he possesses the confidence of the premier and the House of Commons, could not be ousted by the king without bringing the whole mechanism of the government to a standstill. For the entire cabinet would resign in protest; a majority in the Commons would support its action; a general election would have to be held; and the king would be giving a hostage to fortune. So ministerial responsibility to the king is not a very serious affair. Yet there is a measure of such responsibility. The monarch must be kept informed. Queen Victoria once rebuked Lord Palmerston by writing to him that "she expects to be kept informed of what passes between him and foreign ministers before important decisions are taken based on that intercourse." This royal right to be kept informed by the ministry, through the prime minister, is one that is now fully recognized.

2. RESPONSIBILITY OF THE MINISTERS TO ONE ANOTHER.

Second, the members of the ministry are responsible to one another. This is necessarily so because solidarity is the essence of the British ministerial system. So it is a matter of each for all and all for each. The fault of one minister may bring the wrath of the Commons upon the ministry as a whole. For this reason every minister is constrained, not merely as a matter of prudence but of honor, to seek the opinion of his colleagues before taking any action that might evoke criticism. This principle of intra-cabinet responsibility was definitely established in 1851 when Lord Palmerston, without consulting his colleagues, expressed to the French ambassador his approval of a *coup d'état* which had taken place in France.[1] For doing this Palmerston was dismissed from the ministry. Some years ago (1922) the secretary of state for India was forced to leave the cabinet because he made public an official dispatch without consulting his colleagues.

[1] See *below*, Chapter XXII.

On the other hand, so long as a member of the cabinet acts in accord with a policy which has been approved, he can feel assured of unified support from this body under normal circumstances. His fellow ministers will stand solidly behind him. To drive him from office would necessitate forcing the whole ministry out. But all this is subject to the qualification that even ministers of the crown are human beings, with the usual frailties of mankind, who will sometimes leave a colleague in the lurch and let him take the punishment alone. The Hoare incident, already mentioned, gave an example of this.

Finally, and most important, the members of the ministry are responsible to the House of Commons. That is what the term ministerial responsibility really means. There is no statutory requirement that a ministry shall go out of office whenever it shows itself unable to secure and maintain the support of a majority in the House. But by a custom which has now prevailed for nearly two hundred years it is under obligation to do so. The ministry must always be able to demonstrate, by the votes of a majority in the existing House of Commons, or by success at a general election, that it possesses the confidence of the country. Loss of this confidence means loss of office.

3. RESPONSIBILITY TO THE HOUSE OF COMMONS.

There are various ways in which the House of Commons may show its lack of confidence in the ministry and thereby force it either to resign or go to the country. When the financial estimates are under consideration the House may vote to reduce the salary of a minister. The principle of solidarity would then require his colleagues to defend him against this attack. Or the House may reject some government measure. An amendment to such a measure does not necessarily imply want of confidence unless the cabinet inflexibly opposes the amendment and makes an issue of it. Amendments brought forward in the House are often accepted by the minister in charge of the bill. In 1937, for example, the chancellor of the exchequer, Sir Neville Chamberlain, laid certain tax proposals before the House with the cabinet's approval. But unexpected opposition flared up and the cabinet backed down, thus avoiding what might have been a want-of-confidence vote.

HOW A MINISTRY CAN BE OUSTED.

Again, the House may pass some bill which the cabinet opposes, and the issue may become one of confidence in the government. Finally, if the House is dissatisfied with the cabinet's general policy,

without reference to any particular measure, it can at any time pass a resolution of censure or disapproval. British cabinets, as a matter of history, have rarely been forced to resign during the past hundred years by reason of an adverse vote in the House of Commons. They have gone out of office, for the most part, as the result of adverse action by the people at the polls. On the other hand a decision to dissolve parliament and call a general election has sometimes been dictated by signs of a waning hold on the House. Snap votes and mishaps due to the absence of ministerial supporters do not entail the cabinet's resignation. The cabinet has at all times the privilege of demonstrating, by proposing a resolution of confidence, its control of a majority.

THE CABINET'S RIGHT OF APPEAL TO THE PEOPLE.

It is the privilege of the cabinet, when it finds itself defeated or faced by defeat in the House, to ask for an appeal to the people. In other words the prime minister can request the king to dissolve parliament and order a general election. It is contended that the king might refuse to grant this request, provided he could find somebody else able to carry on as prime minister with a majority behind him. But that is a situation which, in the nature of things, would almost never arise. If an election is ordered, the old ministry continues in office during the campaign, but if the result of the polling is unfavorable it does not usually wait for parliament to assemble and vote want of confidence. The practice is for the ministers to hand over their seals of office and make way as quickly as pending business can be cleaned up. This is a matter of a few days, or, at most, a few weeks. Thereupon the king sends for the leader of the victorious party and asks him to form a new ministry. This summons, of course, is not unexpected, and the new prime minister usually has the organization of his cabinet lined up before the royal summons arrives

COALITION CABINETS.

Ordinarily the cabinet is made up of members drawn from one political party, but in times of national emergency, when it is desired to have all the parties work together, a coalition cabinet is sometimes formed. When the World War began in 1914 a Liberal ministry headed by Mr. Asquith was in power. A year later, when the immensity of the struggle became recognized, the prime minister suggested that his parliamentary opponents should be represented in the cabinet, and they accepted. So a coalition ministry, made up of Liberals, Conservatives, and Labor members, was selected. Mr. Asquith con-

tinued as prime minister until 1916 when he was replaced by Mr. Lloyd George. This coalition continued for a time after the war was over, but went to pieces in 1922.[1] Thereupon a general election was held and the Conservatives were successful. But their tenure of power was brief, for they went to the country in 1923 on the issue of inaugurating a protective tariff and were defeated.

The general election of 1923 presented a new problem of ministerial responsibility, for no one of the three parties now controlled a majority in the Commons. The Conservatives had the largest group of members in the House, with the Labor party second, and the Liberals third. Hence the Conservatives were outvoted in the House of Commons when it reassembled and their cabinet was forced to tender its resignation. Thereupon the leader of the Labor party was summoned by the king and proceeded to construct a ministry. For nearly a year this Labor ministry carried on, although it did not have a unified majority of the Commons behind it. On appropriation bills, and on other important measures, the Liberals gave it support. But it existed on sufferance and could not carry into effect the pledges that had been made in the Labor party's platform.

THE MINORITY CABINET OF 1923–1924.

Finally, in the autumn of 1924, the Liberals withdrew their support on a vital question and thereupon the Labor prime minister, Ramsay MacDonald, advised a new election. As a result of this election the Conservatives were returned to power with a majority over the other two parties combined and for a time the old arrangement of a ministry supported by a solid majority was restored. But not for long, because another election came in 1929 and once more no single party obtained a majority in the House. The Labor party, having done best of the three, was again given the reins, having been assured that the Liberals would help on vital issues. But in 1931 this ministry was dissolved by a split in its own ranks and replaced by another coalition of Laborites, Conservatives, and Liberals with Ramsay MacDonald continuing as prime minister.

CABINET CHANGES, 1924–1931.

This coalition of Nationalists, as they called themselves, remained in office under MacDonald's leadership until 1935, but its support came chiefly from the Conservatives. In the early summer of that year Mr. MacDonald gave up the prime ministership and was re-

[1] For some interesting data relating to the coalition cabinet see E. M. Sait and D. P. Barrows, *British Politics in Transition* (New York, 1925), chap. ii.

placed by the Conservative leader, Mr. Stanley Baldwin. A general election ensued with the result that the Conservatives won more seats than all the other parties combined. They were consequently in a position to install in office a straight Conservative ministry, but deemed it best to continue on a Nationalist or coalition basis, although the majority of the ministerial posts were given to Conservatives. The present English ministry, therefore, is a coalition in name but Conservative in fact. Its prime minister is Neville Chamberlain, who succeeded Stanley Baldwin in 1937.

FURTHER CHANGES, 1931–1937.

Ministerial responsibility does not necessarily postulate a strict two-party system. It can be maintained, after a fashion, when there are several party groups in the legislative body, as witness the experience of France. But the principle of ministerial responsibility can be more smoothly operated when there are only two parties, one controlling the government and the other constituting "the opposition." Parliamentary government works best, indeed, when the ministry has a solid, working majority behind it, but not too large a majority. A strong, united, vigorous opposition keeps a ministry on its mettle and makes its responsibility real. Parliamentary government cannot function efficiently if the ministry falls every few months. But it functions most efficiently when the ministry is kept in constant fear of falling. The history of parliamentary government indicates that cabinets which are formed from a single party, and are supported by a relatively small majority, do better work than cabinets of any other kind. The future of ministerial responsibility in England is therefore bound up with the question whether the country is going to maintain two strong political parties or more than two.

MINISTERIAL RESPONSIBILITY AND THE TWO-PARTY SYSTEM

GENERAL. The organization, functions, and responsibility of the cabinet are dealt with in all the treatises and textbooks on English government, for example, Anson's *Law of the Constitution* (see *above*, p. 92); Lowell's *Government of England*, Vol. I, chaps. ii–iv; Ogg's *English Government and Politics*, chaps. vi–ix; Marriott's *English Political Institutions*, chaps. iv–v; J. J. Clarke's *Outlines of Central Government* (7th edition, London, 1935); Low's *Governance of England*, chaps. ii–ix; Courtney's *Working Constitution of the United Kingdom*, chaps. xii–xiii; and Bagehot's *English Constitution*, chaps. i, vi, viii–ix. Special mention should also be made of the discussions in W. Ivor Jennings, *Cabinet*

Government (Cambridge, 1936), pp. 70–113; Sir John A. R. Marriott, *Mechanism of the Modern State*, Vol. II, chap. xxv; Lord Hewart, *The New Despotism* (New York, 1929), and Ramsay Muir, *How Britain is Governed* (3rd edition, London, 1933), chap. iii. Discussions of the British cabinet system from a foreigner's point of view may be found in W. Hasbach, *Die parlamentarische Regierung* (Berlin, 1919), Robert Redslob, *Le régime parlementaire* (Paris, 1924), and Hermann Savelkouls, *Das Englische Kabinett System* (Munich, 1934). An old book, still possessing value, is R. H. Gretton, *The King's Government: A Study in the Growth of the Central Administration* (London, 1913).

SPECIAL STUDIES. Small volumes in the Whitehall Series (see *above*, p. 98, footnote) deal with the organization and work of the various ministerial departments. A general survey of them all is given in the initial volume of the series—C. Delisle Burns, *Whitehall* (London, 1921). John Willis, *The Parliamentary Powers of English Government Departments* (Cambridge, Mass., 1933) is a good study of an important subject. J. A. Fairlie, *British War Administration* (New York, 1919) explains the ways in which the government was adapted to war conditions.

SELECTED DOCUMENTS. Some interesting official documents and other papers are reprinted in E. M. Sait and D. P. Barrows, *British Politics in Transition* (New York, 1925), in N. L. Hill and H. W. Stoke, *The Background of European Governments* (New York, 1935), pp. 36–64. Special attention should be called to the *Report of the Committee on Ministers' Powers* (1932), officially cited as Cmd. 4060.

BIOGRAPHIES AND MEMOIRS. Not only prime ministers but scores of other ministers have written autobiographies and memoirs or have had their biographies written. This has provided a rich depositary of interesting material concerning the day-by-day workings of the ministerial system. From the vast array of such writings only a few can be mentioned here: W. S. Churchill, *Lord Randolph Churchill* (2 vols., New York, 1906), Lord Haldane, *Autobiography* (London, 1929), and H. A. L. Fisher, *James Bryce* (2 vols., London, 1927). Others may be found in the *Guide to Historical Literature* (New York, 1931), pp. 559–560. Nor should one omit to mention the anonymous *Mirrors of Downing Street* (revised edition, London, 1923) which was widely read both in England and in America at the time of its publication.

CHAPTER VII

THE DEPARTMENTS AND THE CIVIL SERVICE

Bureaucracy has become, during the last century, and especially during the last generation, a far more potent and vital element in our system of government than the textbooks realize. It has, indeed, become the effective and operative part of our system. The power of this bureaucracy, the permanent civil service, is to be found not only in administration, but also in legislation and finance: it not only administers the laws, it largely shapes them; it not only spends the proceeds of taxation, it largely decides how much is to be raised and how it is to be raised.—*Ramsay Muir.*

Administrative work has increased greatly in all countries during recent years. This has led to the multiplication of departments, bureaus, offices, commissions, and boards: their total number is everywhere much greater than it was a quarter of a century ago. The ten regular executive departments in the national government of the United States now find themselves far outnumbered by the host of federal administrative agencies which have been called into existence, more especially during the past few years. It used to be said that the American national administration was a planned affair, with a certain amount of logic and symmetry embodied in it, while the English executive agencies had merely grown by accretion, with a confusing heterogeneity of names and relationships.

GROWTH OF ADMINISTRATIVE FUNCTIONS

That statement, however, is no longer so close to the facts as it used to be. It is true that the ten regular executive departments in the United States (the heads of which constitute the President's cabinet) all stand on a common footing, were created in the same way, although at different times, and are alike in their relationship to the nation's chief executive. The various departments which are headed by cabinet ministers in England, on the other hand, have no uniformity of nomenclature, were created in different ways, and are by no means on a common footing. The treasury department, for example, exercises a considerable measure of control over all the

AND THE ELABORATION OF ADMINISTRATIVE MACHINERY.

others. But when one passes outside of the circle of what may be called the "cabinet departments," a much similar situation exists in both countries. In both there has been developed a vast network of non-departmental machinery consisting of boards and bureaus, commissions and committees, and even public corporations organized to help the government do its work.

In the preceding chapter of this book a brief outline of the organization and functions of the British "cabinet departments" was given. But there are more ministers and departments outside the cabinet than in it. Prominent among these are the minister of pensions, the postmaster-general, the first commissioner of works (or minister of public works), civil lord of the admiralty, financial secretary of the treasury, attorney-general, and church commissioner. Their functions, in a general way, are suggested by their titles. There are also eight undersecretaries of state associated with the eight principal secretaries; and no fewer than ten parliamentary secretaries deal with such branches of administration as naval affairs, trade, transport, mines, overseas commerce, agriculture, labor, pensions, education, and health. All of these rank as members of the ministry, but are not members of the cabinet.

THE NON-CABINET DEPARTMENTS.

Nor do the ministries, big and little, cover the entire field of public administration in Great Britain. New agencies have had to be provided to meet new needs and old ones have had to be adapted or expanded. As in the United States this expansion of administrative machinery has been in accordance with no fixed plan, and the result in both countries has been the same,—a formidable array of administrative agencies, created one at a time to meet specific problems,[1] piling up on each other's heels, with duplication of effort, overlapping of functions, and no clear boundaries of jurisdiction between them. There is need for administrative reorganization in Great Britain as in the United States, but in both countries the task of effecting it is a next to impossible one. For every ministry, bureau, board, office, or public corporation becomes a vested interest on the day that it is established. All those connected with it, as well as their friends and the friends of their friends, will oppose to the last ditch any attempt to change its status, its powers, or its relations with other administrative agencies.

THE NEW AGENCIES.

[1] The long list of them may conveniently be found in W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936), pp. 433–434.

In addition to the administrative agencies which have statutory powers there is a considerable list of advisory committees. These have no authority of their own but they often exercise a good deal of influence Some, like the committee of imperial defense, the committee of civil research, and the economic advisory council have the function of advising the cabinet on matters within their respective fields of interest. But a much larger number of these committees have the duty of providing advice for individual departments of the government,—for the ministry of transport, the ministry of health, and so on. Advisory committees are believed to be rendering a useful service in Great Britain. More particularly they are proving helpful in keeping departmental policy in contact with public opinion.

ADVISORY COMMITTEES.

Both Great Britain and the United States have prided themselves upon maintaining "a government of laws, not of men." But in neither country is this boast any longer true. Government on both sides of the Atlantic has been becoming more and more a government of men, that is, of government by executive order rather than by law, by decree rather than by deliberation. This development has been inevitable because no parliament or congress, however diligent, could possibly find time to supply all the detailed legislation that has been demanded in recent years. Much of this has been of a character so intricate and technical that no ordinary legislator could understand it. So legislative bodies in English-speaking countries have been rapidly adopting the Continental European practice of passing laws in general terms and then leaving to the administrative authorities the real job of elaborating them.[1]

ADMINISTRATIVE LEGISLATION: WHY WE HAVE IT.

It is true, of course, that orders-in-council, departmental regulations, and other such rescripts cannot go beyond the bounds of the statutes; but the terminology of a statute can usually be stretched or twisted as the occasion demands. Within the bounds of a general law which authorizes the king-in-council, or an individual department, to make appropriate rules and regulations there is a good deal of leeway. Complaint is frequently heard in England that parliament is merely handing

ITS LIMITATIONS.

[1] In the United States there are said to be more than 600 federal agencies which have authority to make rules, issue orders, and frame regulations affecting the liberties and property of individuals and corporations. F. F. Blachly and M E. Oatman, *Administrative Legislation and Adjudication* (Washington, 1934).

back to the crown the powers which it battled for centuries to take away from the king. The answer is that giving power to the crown does not mean restoring authority to the king, for the crown is now the servant of parliament. Whatever authority parliament delegates to it may be taken away at any time. Incidentally it should be mentioned that while the courts in Great Britain cannot declare any act of parliament unconstitutional, they can and do invalidate orders-in-council or departmental regulations if they find that those who issue them are exceeding their authority.[1]

ADMINISTRATIVE JUSTICE.

Great Britain and the United States have also prided themselves on the absence of what is known in the countries of Continental Europe as "administrative justice,"—in other words adjudications made by administrative agencies rather than by the regular courts. But both countries have been building up an elaborate system of administrative justice in recent years. In the United States such bodies as the interstate commerce commission, the federal trade commission, and the federal communications commission hold hearings and reach decisions which impose penalties. They order some corporation to "cease and desist" from doing this or that, or they take away a radio station's license, or do other things which constitute a deprivation of property. Usually, to be sure, what they do is in the public interest, but it is none the less a dispensing of justice by the administrative, not by the judicial, authorities.[2] The same is true in Great Britain. Various administrative agencies receive complaints, hold hearings, hand down their decisions, and enforce their penalties. In many cases there is no right of appeal to the courts such as is usually (although not always) preserved in the United States.

WHY IT HAS DEVELOPED.

Administrative justice is becoming a feature of modern government because the regular courts cannot do the work. Much of it involves the hearing and determination of highly technical issues, quite beyond the competence of the most learned judge—not to speak of a jury. Problems of engineering are often involved, or of accounting, or of public utility technique. The administrative authorities are experts in

[1] The whole subject of administrative legislation is expounded in J. Willis, *The Parliamentary Powers of English Government Departments* (Cambridge, Mass., 1933). For a criticism of it see C. M. Chen, *Parliamentary Opinion of Delegated Legislation* (New York, 1933).

[2] For a full discussion of this subject see John Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass., 1927).

these fields, which the regular judicial authorities are not. Moreover the grist of controversies arising under the administrative regulations is so large that if the regular courts were called upon to settle them the whole judiciary would have to be trebled or quadrupled in size. That solution of the problem would not be an economy nor would it make the system more satisfactory.

THE AMATEUR AT THE TOP.

Many years ago Walter Bagehot wrote in one of his facile epigrams that a minister's business is "not to work his department but to get it worked." That is a self-evident truth. A newly appointed minister takes charge of a great department like the British colonial office, with jurisdiction extending to the ends of the earth. He is chosen for this post by the prime minister not because he knows anything about colonies but because he is an old party war horse, or a nimble debater on the floor of the House, or because someone is needed in the cabinet from the northern counties, or for some other such reason. Between attending sessions in parliament, going to cabinet meetings, keeping all manner of public engagements, and joining in the London social whirl he has an hour or two a day at his desk to master the problems of a world-wide commonwealth. How does he manage to do it? The answer is that his staff of permanent subordinates, the bureaucracy, the civil service, are the ones who do it for him.

HIS FUNCTIONS.

In a word the minister's function is not to do the job but to get it done. That, of course, is the task of every great administrator whether in public or in private business. The British minister is responsible for getting this work done right, and he may be called to account by the House of Commons at any time, but the work of his department calls for expert skill—and the minister is not an expert. He lays no claim to that qualification. In nine cases out of ten he has no professional qualifications for the technical responsibility to which he is assigned.

HIS DEFICIENCIES.

The British war office has been headed at times by a philosopher or a journalist, the admiralty by a merchant or a barrister, and the board of trade by a university professor. One would suppose that in the treasury at least there would be a minister familiar with the intricacies of public finance. But no,—the chancellors of the exchequer have often been lawyers, country squires, or professional politicians. "A youth must pass an examination in arithmetic," says Sir Sidney Low, "before he can hold a second-class clerkship in the treasury; but the

chancellor of the exchequer may be a middle-aged man of the world who has forgotten what little he ever learned about figures, and is innocently anxious to know the meaning of 'those confusing little dots' when first confronted with the treasury accounts worked out in decimals."[1] Indeed it has sometimes been said that the best qualification for a cabinet position in Great Britain is that the minister shall know nothing at all about its duties. In this connection one recalls the advice which Sir Joseph Porter, K.C.B., first lord of the admiralty, gave to his subordinates in Gilbert and Sullivan's *Pinafore:*

> Stick close to your desks and never go to sea,
> And you all may be Rulers of the Queen's Navee!

THE QUALITIES THAT HE NEEDS.

This does not mean, however, that members of the British cabinet are men of mediocre attainments. The successful minister, indeed, must be something of a superman. He must be persistent and resourceful, otherwise he would never have risen so far in English politics. He must have a knowledge of public affairs. He must be able to think straight and to express himself clearly, for almost daily he will be called upon on the floor of parliament to answer questions and make explanations. He must be able to decide things quickly and be right at least half the time. He must be able to sift good advice from bad when he hears it. And he must be one who is able to delineate clearly the general lines of departmental policy, letting his subordinates supply the technical skill that is needed to carry these principles into operation. In matters of routine and detail this means, according to one critical observer, that "unless he is either a self-important ass or a man of quite exceptional grasp, power and courage (and both of these types are uncommon among successful politicians) he will, in ninety-nine cases out of a hundred, simply accept their view, and sign his name on the dotted line."[2]

HIS DEPENDENCE ON HIS SUBORDINATES.

In the nature of things a minister's subordinates have him at their mercy. They have had more experience than he, and sometimes have more agility of mind. Moreover, they have dealt with a minister before and know the species. Whichever way he turns they will have arguments, objections, precedents, and suggestions—all made ready for him. When they present any matter for his consideration there is

[1] Sir Sidney Low, *The Governance of England* (New York, 1917), pp. 201–202.
[2] Ramsay Muir, *How Britain is Governed* (3rd edition, London, 1933), pp. 55–56.

usually only one course for the minister to pursue unless he is prepared to spend his own time in studying all its implications. And if he tried to do that he would have no time for anything else. Consequently the influence of the permanent officials upon the minister is apt to be automatically controlling except to a man of commanding power and long administrative experience with a prodigious capacity for work.

Englishmen see nothing anomalous in placing unskilled laymen at the heads of departments which have administrative problems of a highly technical sort to handle. Initial unfamiliarity with the work is no barrier to appointment. When Lord Palmerston took the colonial office under his wing many years ago he said to his assistant: "Just come upstairs for half an hour and show me where those confounded colonies are on the map." It is not the Anglo-Saxon theory of government that a major-general should be secretary for war or that an admiral should be first lord of the admiralty. On the contrary it is deemed virtually essential that these highly professionalized departments should have civilians at their head.

THE WESTMINSTER AND WASHINGTON PRACTICE COMPARED.

The same opinion is generally held, and the same practice followed, in the United States, but not in the chief countries of Continental Europe. In England the doctrine of amateur ministerial control is extended broadly to all the departments, and that has generally been true of the government at Washington, although in recent years there has been a tendency to depart from it. In the United States there is a growing disposition in certain quarters to insist that the men whom the President chooses for certain cabinet positions shall have some vocational qualifications for the departmental work which they are expected to do—for example, that the secretary of agriculture shall be a "dirt farmer," and the secretary of labor someone who has had a close affiliation with organized labor.

These demands betoken a failure to grasp a sound maxim of political science, namely, that the work of experts should always be supervised by laymen. When an expert supervises the work of experts there is almost certain to be disagreement, for it is in the nature of experts to disagree. It is also their inclination to be unfriendly to new and unusual ways of doing things. Experts like to keep things running in

IS PROFESSIONALISM DESIRABLE AT THE TOP?

the ways to which they have become accustomed. Gladstone once said that he could not remember a single administrative reform which the experts of the civil service did not oppose when he first suggested it. The idea that the secretary of agriculture ought to be a farmer, moreover, suggests an erroneous idea of what this official is supposed to be and to do. He is not chosen to look out for the interests of the American farmer but for the interests of the American people. The chancellor of the exchequer at Westminster does not represent the bankers of England but the people of England. The chief qualification of a department head, in any country, is that he shall be ready and able to realize the interests of the whole people, not that he shall be someone who will devote himself to promoting the interests of a particular class.

THE "POLITICAL" HEADS IN ENGLAND.

The English have held firm to this principle. In each department the minister and his highest subordinates are strictly political officers. They hold their posts so long, and only so long, as their party remains in power. When a cabinet goes out of office they go with it. They bear to the prime minister a relation not widely different from that which the secretaries and assistant secretaries in the national departments bear to the President of the United States, inasmuch as the tenure of each is bound up with that of the whole administration.

THEIR "NON-POLITICAL" SUBORDINATES.

But the subordinate officials who make up the permanent civil service are in a different position. They are non-political. Hence they do not lose their positions when a cabinet is turned out of office. If the House of Commons has any fault to find with the conduct of a permanent official in any department it turns upon the minister although he may not deserve the blame. Conversely, if there is any credit being passed out for the conduct of a department the minister gets and takes it all, although he may be similarly undeserving of it. So far as responsibility is concerned, the minister is the whole department. A clear distinction should therefore be made between the *political* and the *permanent* staff of an English department. The former provides the democratic element in administration; the latter the bureaucratic. Both are essential—one of them to make a government popular; the other to make it efficient. And the test of a good government is its successful combination of these two qualities.

The officials who make up the *political* staff of the English ad-

THE POLITICAL STAFF IS SMALL.

undersecretaries, parliamentary secretaries, financial secretaries, civil lords, junior lords, and what not. The chancellor of the exchequer, for example, has with him in the treasury not only a first lord who is its titular head, but several junior lords, a parliamentary secretary, a patronage secretary (who serves as chief ministerial whip in the House of Commons), and a financial secretary. The secretary of state for foreign affairs has as his chief political coadjutor a parliamentary undersecretary, in addition to a permanent undersecretary whose position is not political. These lesser lights are members of the ministry although not members of the cabinet. All of them are political officers with seats in parliament, and they go out of office when the cabinet resigns.

WHAT THE PERMANENT OFFICIALS DO.

But this political staff, comprising fewer than a hundred members in all, forms a very small proportion of the entire administrative personnel. Many times more numerous is the permanent staff, officially known as the permanent civil service, or by its critics as the bureaucracy. These officials are not politicians and do not sit in parliament. They are selected, appointed, and promoted for their administrative capacity alone. They must take no part in political campaigns. Public administration is their life work. Cabinets and parliaments come and go; but like Tennyson's brook the permanent staff keeps placidly on its way. Numbering nearly half a million, and ranging from high administrative officers down to typists and clerks, -- these men and women collect the revenue, keep the accounts, compile the reports, enforce the laws, maintain the public institutions, and translate policy into action throughout the realm. Together they make up the civil service of Great Britain, entrance to which is by competitive examination, promotion on a basis of merit, and aloofness from politics the condition of permanent tenure.

THE CIVIL SERVICE

The story of the British civil service ought to have at least a paragraph or two in every book on the science of government, for it teaches some instructive lessons.[1] The story begins with the tribu-

[1] It was originally named the *civil* service to distinguish it from the *military* service. The best outline of its development is that given by Robert Moses in his *Civil Service of Great Britain* (New York, 1914).

years ago. This great commercial organization, with its numerous trading posts in the Orient, had to employ large numbers of young men as traders, bookkeepers, and clerks. The company paid good wages and, what was more, its employees were able to earn additional income by dipping into trade on their own account. Some of them made large sums in this way. So the idea of getting to India, earning a good salary there and perhaps a fortune by speculation as well—that prospect appealed to many thousands of young Englishmen in the early years of the eighteenth century. The quest for company clerkships in India became so intense that the applications far exceeded the vacancies. And what happened is what might have been expected under such circumstances. Influential stockholders and others began to bring pressure upon the company's higher officers in order to have their own sons or nephews appointed. Incompetents many of them were, but paternal influence was often effective in their behalf and hundreds of younger sons hied themselves off to India, ostensibly to serve the company but in reality to shake the pagoda tree for their own benefit.[1]

ORIGIN OF THE BRITISH CIVIL SERVICE.

THE EAST INDIA COMPANY.

Here was the spoils system in its most obnoxious form, that is, in a companionate marriage with nepotism. The whole service in India began to be demoralized and the higher officials of the company sent home complaints on every ship. In sheer self-defense, therefore, the directors of the company were forced to devise a plan whereby all applicants would be required to undergo a period of training before being sent to India. For this purpose a training school was established at Haileybury and there the unfit were weeded out. Haileybury became the only door to appointment and no one was allowed to enter the company's Indian service until he had attended at least four terms and passed the prescribed examinations. Having a great excess of applicants for admission the school was able to raise its standards to a high point; higher, indeed, than those of Oxford or Cambridge.[2]

THE HAILEYBURY EXPERIMENT.

[1] There is a story that Lord Clive, when he managed the company's affairs in India, made it his practice to meet these young fortune-hunters immediately on their arrival. Asking each in turn how much he expected to acquire, Clive paid the newcomer the amount and shipped him back to England.

[2] One eminent scholar, who later became a professor at Oxford, thus spoke of his own experience at Haileybury: "I soon discovered that if I wished to rise

Then people began to notice that the East India Company was getting more than its share of the best young brains in the United Kingdom and its extraordinary success in building up a great commercial empire was commonly attributed to its high standards of selection.

Meanwhile, however, the number of political (as distinct from commercial) posts in India grew with the extension of the company's territorial interests and public opinion in England began to rebel against a monopoly of these appointments by a single training school under the control of a commercial company. In 1853, therefore, parliament abolished the company's right to make these appointments and provided that all subordinate political offices in India should be filled by the crown from an eligible list based on open, competitive examination, with no attendance at any training school required. The school at Haileybury was thereupon closed and the competition thrown open to all British subjects within certain age limits no matter where they had obtained their preparation. The adoption of this plan was largely the work of Macaulay, the historian, and it embodied a step of great importance. It paved the way for the abolition of the spoils system and the establishment of competitive examinations in all the home departments of British administration. Reformers argued that a plan which was working so well in India ought to be given a trial at home. Their agitation succeeded and civil service examinations were gradually established for all branches of the British administrative service.

THE CHANGE OF 1853.

The spoils system is commonly thought to be of American origin, with President Andrew Jackson as its chief progenitor. But the spoils system is not a native son among American institutions. Long before it appeared on this side of the Atlantic it was the custom in Great Britain to look upon appointments to well-paid public offices as the legitimate rewards of partisan service. The spoils of victory were distributed among the personal and political friends of the ministers in Walpole's day, or even earlier. At the middle of the nineteenth century members of the House of Lords were so successful in getting their impecunious relatives on the public payroll that John Bright once referred to the civil service as "the outdoor relief department of the British aristocracy."

THE SPOILS SYSTEM IS NOT OF AMERICAN ORIGIN.

above the level of an ordinary student I had a task before me compared with which my previous work at Oxford could only be regarded as child's play."

Members of parliament who supported the ministers were allowed to recommend officials in their own constituencies and these "placemen" sometimes bulked so large among the voters of the decayed boroughs that they virtually controlled the elections.[1] Appointments were for no definite term, hence removals could be made at any time. So Andrew Jackson and his friends did not invent the spoils system; they merely transplanted an old-world institution to a new soil. But unlike most transplantations, this one took root and grew luxuriantly in the new environment. In time it became one of the most noxious weeds in the garden of American politics.

ITS EARLY VOGUE IN ENGLAND.

The first civil service competitions were established in England shortly after the middle of the nineteenth century. The initial British Civil Service order-in-council did not go very far, however, and there were numerous flaws in it. The examinations, for example, were to be in accordance with the specifications of the department concerned, and these were often expressed in a narrow or pedantic way. But step by step the law was improved, and the powers of the civil service commission increased, until eventually the principle of fair and open competition based upon broad academic preparation was extended to virtually all the non-political positions in the national service.

THE FIRST BRITISH CIVIL SERVICE ORDER-IN-COUNCIL (1855)

Today all the permanent officials and employees in the public offices of Great Britain, with a few exceptions, are chosen under civil service rules. The exceptions include those officials whose work is of highly specialized or confidential nature, such as the permanent undersecretaries, the assistant secretaries, the chiefs of bureaus or branches, and the principal clerks, as they are called. These officials are not selected by competitive examination but in nearly all cases are promoted from lower positions in the department concerned. Exceptions are also made in the case of employees whose work is of an entirely routine character, requiring no particular qualifications, such as porters and janitors. The examinations for all other positions are conducted under the auspices of a civil service commission composed of three members who are appointed by the crown. Its

THE PRESENT SYSTEM.

[1] In one borough, where a count was made, it was found that one hundred and twenty-five out of five hundred voters had obtained appointments through the influence of a single member.

work, however, is subject on all matters to the approval of the treasury department. The commission's chief functions are to examine candidates and to certify the results. It has nothing to do with classifying positions, fixing salaries, determining promotions, or administering discipline.

The whole civil service, irrespective of departments, is divided into grades or classes and a separate examination is provided for each. A candidate does not apply, for example, to be appointed to a clerkship in the foreign office, or in the ministry of health. He takes the general examination prescribed for all the higher clerks, and if he stands highest in the results he gets first choice as to the service which he will enter. It will be noted, accordingly, that the civil service examinations of Great Britain, unlike those commonly held in the United States, have no relation to the particular branch of administration which the applicant hopes to enter. They are distinctly academic in character and cover a wide range of university subjects (languages, history, mathematics, natural science, philosophy, political science, and so on) from which the applicant is permitted to elect a certain number.

GRADATIONS IN THE SERVICE.

The standards are high and the competition for the better posts is very keen. In the case of some positions it is virtually impossible for anyone not a high-ranking university graduate to secure a place near the top of the list. These examinations are probably the stiffest that exist in any country. In the case of the lower grades the examinations are not so difficult and may be passed with credit by those who have had a good secondary school education. But they are severely selective because of the keen competition. This competition does not seem to be lessened by the fact that an age limit is imposed on all candidates. This differs in the various grades, but it is fixed in such way that young men and women, in order to enter the service, must take the examinations soon after graduating from school or university. In the case of university graduates the age limit is twenty-four. Thus there is no provision in Great Britain (as in the United States) for admitting to the civil service examinations middle-aged men and women who have failed to make headway in private vocations. The British civil service is a career which one must enter, if at all, at an early age. This limitation facilitates the system of promotions and eliminates most of the pressure which would otherwise

CHARACTER OF THE EXAMINATIONS.

come from politicians for the appointment of their needy friends.

Writers on the science of government have rightly emphasized the important difference between the English and American methods of examining candidates for classified positions. In the United States every civil service test is adapted to the particular position that is to be filled. The tests for clerks in the postal service, for example, are quite different from those given to applicants for clerical positions in the state department. It is not general education but special qualifications that the civil service authorities in the United States seek to ascertain. Hence the tests are specialized, practical, non-academic. And if the appointee is to spend his entire life in a single position, doing a particular form of work, there is much to be said for the American plan. But if his initial appointment is regarded merely as a starting-point from which he expects to rise by promotion, there is much less to be said for it. Indeed, the outstanding defect of the American plan is that it tends to draw into the public service those mediocrities who can pass a routine test for a subordinate position but who lack the general capacity to rise. They go in as bookkeepers or accountants or draftsmen or typists, and are reasonably well qualified for such work; but when it comes to picking a bureau chief from a whole roomful of them, there is usually not one whose general education and versatility qualifies him to be considered for the higher post.

A FUNDAMENTAL DIFFERENCE BETWEEN THE ENGLISH AND THE AMERICAN CONCEPTIONS OF A CIVIL SERVICE EXAMINATION.

Public opinion in America, so far as it relates to civil service examinations, is strongly inclined to emphasize the specific, the concrete, the "practical." Americans have a belief that the test should be adapted to the job. It would be hard to convince the average congressman that academic tests, such as we use for graduation with honors in our colleges and universities, would be the right thing for admission to the public service. Make such a proposal to him and he will think poorly of your intelligence. Yet it has been demonstrated, over and over again, in all branches of the public service, that men who have been highly and broadly educated do better and rise more rapidly than those whose competence extends to a single line of work. The American system, to sum it up, does not articulate itself with the system of education in schools and colleges but prefers to accept general mediocrity for the sake

THE AMERICAN EMPHASIS ON THE "PRACTICAL."

of the special qualifications, while the English system, by recruiting directly from the regular educational institutions, disregards special training and goes out for general intellectual attainment.

A cogent defense of the English point of view was set forth in an official report some years ago. "We regard the existing scheme," it said, "as designed to test the results of university education in general, and not the results of a special education preparatory to the public service. It would no doubt be possible to construct a scheme of examination comprising only subjects directly useful in the home civil service, another such for the Indian civil service, another for the foreign office, and so forth. But we are agreed that the examinations should be a test of general rather than specialized ability and education, and that it should be a matter of selecting under the existing scheme of national education those candidates who have used the best talents to the best advantage under that scheme. We consider that the best qualification for a civil servant is a good natural capacity trained by a rational and consistent education from childhood to maturity. We consider that the first requisite for a successful competition is a good field of candidates and that such a field can best be obtained by adapting our scheme to the chief varieties of university education, so that candidates while working for university honors will be at the same time preparing themselves to join in the competition if, when the time comes, they are attracted to it. We do not wish candidates to adapt their education to the examination; on the contrary the examination should be adapted to the chief forms of general education. We consider it highly important that candidates who enter this competition, and are successful, should be at least as well qualified for other non-technical professions as if they had never thought of it."[1]

HOW ENGLISHMEN LOOK AT THE PROBLEM.

In 1929 a royal commission, known as the Tomlin Commission, was organized in Great Britain to report on the structure and organization of the civil service, the conditions of service, the remuneration paid to the officials, the question of ex-service men, and the retirement arrangements. Like preceding commissions which had dealt with questions of civil service in Great Britain this one was composed of laymen representing various points of view in relation to the subject. Its final report was issued in July, 1931.

THE TOMLIN COMMISSION.

[1] *Report of the Committee on Civil Service* (1917).

Generally speaking, the report was conservative in its findings and recommendations.[1] This was perhaps to be expected in view of the fact that the members of the commission were selected from sources friendly to the government. The commission found the British civil service system adequate and satisfactory on the whole. Existing methods of recruiting the personnel were commended and the standards of remuneration were endorsed in the light of prevailing wage levels. Some minor improvements, however, were suggested with respect to salary schedules and a recommendation was made that a contributory pension system be substituted for the existing non-contributory allowance arrangements. The latter would apply to new entrants only. The commission also endorsed the practice of maintaining departmental councils, made up of higher and subordinate officials, for the adjustment of service difficulties arising within the departments.

ITS RECOMMENDATIONS.

Once appointed to the civil service in Great Britain an official holds office during good behavior, or until he reaches the age of sixty, when he may retire on a pension.[2] There is no danger that he will be removed when a ministry changes. It is an essential of good behavior, however, that he shall abstain from all active participation in politics. He is free to vote but not to serve on an election committee or to canvass for votes. He is forbidden to address political gatherings or otherwise to make an open display of partisanship. But members of the civil service are permitted and even encouraged to join a national association of public employees and they are provided with a regularly and officially recognized channel for the presentation of their grievances.[3]

THE PERMANENCE OF TENURE IN ENGLAND.

Promotions in the British civil service are made on the basis of seniority, service records, and the appraisal of general ability. In the lower grades there are promotional examinations to test this ability; in the higher grades the appraisal is made by the department head. In the larger departments there

PROMOTIONS.

[1] *Report of the Royal Commission on the Civil Service* (1929–1931), cited among British public documents as Cmd. 3909. For a criticism of this report see W. A. Robson, Herman Finer and others, *The British Civil Servant* (London, 1937).

[2] At the option of the official this age limit can usually be extended to sixty-five.

[3] By means of departmental councils and a national council. For an explanation see Herman Finer, *The British Civil Service* (London, 1927), pp. 77 *ff.*, also the pamphlet by Morris B. Lambie included in the bibliography at the end of this chapter.

are promotional boards which prepare the ratings and lists. These are submitted to the department head who makes his recommendations from them. But before they are put into effect these recommendations for promotion must be certified by the civil service commission and approved by the officials of the treasury department. In this way virtually all favoritism in promotions has been eliminated.

WHY STABILITY IN THE BRITISH CIVIL SERVICE IS ESSENTIAL.

Now the following question will, no doubt, suggest itself to American readers: What is there to prevent an incoming English ministry from abolishing a large number of positions, thus throwing members of the civil service out of office, and creating new positions exempted from the examinations, for the benefit of the new ministry's own political friends? There are no constitutional barriers to such an action. No court would have authority to reinstate the dismissed officials. But the tradition of permanence has now become so firmly entrenched that no new ministry would dare assail it. Every intelligent Englishman is aware that the continuity of administrative work would be utterly impossible under a system of ministerial responsibility if the non-political staff went in and out with every change of ministry. In the United States the spoils system was able to rise and flourish for a long time because every national administration is bound to stay in office for at least four years.

IT RESULTS FROM MINISTERIAL RESPONSIBILITY.

But in England a ministry has no minimum tenure. It may take office today and find itself overturned within a few months. Obviously it would never do to make the continuity of administration subject to interruption at any time. And no sensible man would accept a subordinate post in the government service if he knew that he might be ousted within a week, a month, or a year. Permanence of tenure on the part of the administrative staff has been established in Great Britain because no other arrangement would be workable under the system of ministerial responsibility. The same permanence, as will be seen later, has been established in France because changes of ministry are even more frequent there than in Great Britain. If a parliament desires complete freedom to turn a cabinet out of power at any moment, it must make some provision whereby the routine work of administration will be carried on without frequent shocks of interruption.

The association between a political staff which may change at any moment and an administrative staff which does not change—this association has some important consequences. It provides parliament, through the ministers, with expert counsel on every question that comes up. We often hear it said that the Congress of the United States should give greater heed to the opinions of the technical experts in Washington; that in enacting a tariff law, for example, it should defer to the advice of the tariff commission; that in railroad legislation it should be guided by the technical skill of the interstate commerce commission, and that in dealing with the farm relief problem it should seek guidance from the experts in the department of agriculture. This may be quite true, but the practical difficulty lies in the absence of any provision for close contact between the leaders in Congress and these men who have the specialized knowledge. In the absence of cabinet responsibility to Congress they are kept at arm's length apart.

RELIANCE ON EXPERTS IN ENGLAND AND IN AMERICA.

This situation is unfortunate from both angles, because the civil service official who is not a member of the legislature sees only one aspect of his problem; the same is true of the legislator who has had no experience in administration. Seeing the problem from different angles they often disagree and since Congress has the ultimate power its view prevails. And indeed it is essential that the ultimate decision on any question of public policy shall rest with the legislative body. But it is equally essential to the successful working of democratic government that public policies shall not be decided without consulting the men whose function it will be to carry out such policies after they have been determined.

In England the men who execute the laws have a substantial share in the making of them. There has been some complaint, in fact, that they have too much influence upon the making of the laws. Public bills, introduced into parliament by the ministers, are put into form by the permanent officials of their departments. The provisions of such measures are largely the result of departmental experience. It is true, of course, that the ministers assume responsibility for these bills and assume the task of explaining and defending them in parliament. For it is an unwritten rule in parliamentary debates that no mention shall be made of the permanent officials either by way of praise or of criticism, even though it be known to

IN ENGLAND THERE ARE NO "CHECKS AND BALANCES."

everybody that they, not the ministers, have put the measure ir form. So far as parliament is concerned these subordinate offici are non-existent. No minister ever takes shelter behind the staff his department.

Parliament, according to one of its critics, is a tool in the har of the minister, and the minister is a tool in the hands of the p manent officials.[1] This is a rather exaggerated way putting it. But even an exaggeration may perfo a useful service by sharply calling attention to distinctive feature—as this one does,—which that laymen in British government have all the lead ship while experts have most of the power. So long as the gove ment of Great Britain is conducted by men and not by superm this will inevitably be the case. The work of such departments the foreign office, the home office, the colonial office, the treasu not to speak of the versatile ministry of health, involves an enorm amount of detail. These details must be turned over to subordinat and reliance must be placed upon them. But details lead to pr edents, and precedents crystallize into a general policy. It is this sense that the permanent officials, although not supposed have any share in directing the affairs of state, do in fact hav very important share.

IS THE MINISTER CONTROLLED BY HIS SUBORDINATES?

It is sometimes said that the dependence of the ministers up their permanent subordinates is accentuated by the practice asking questions on the floor of parliament. As v presently be explained, it is the privilege of a member to put notices of questions on the quest paper and have them answered by the minist during the hour allotted for this purpose.[2] Now data for answering these questions, and even the answers themsel are prepared by his office and handed to the minister in nea typewritten form. Necessarily so, for if a minister were persona to prepare all the answers which he is required to read in the Ho he would have time for nothing else. So he takes what is given him. Moreover, when he has a speech to make, his civil serv coadjutors round up the facts and the arguments for him—sor times even write the speech itself. In this way, it is said, he becor the mouthpiece of his official subordinates.

PARLIAMENTARY "QUESTIONS" AND THEIR RELATION TO THIS MATTER.

[1] Harold J Laski, in *The Development of the Civil Service* (London, 1922), p.
[2] See *below*, Chapter XII.

Here, again, it is easy to exaggerate. The British minister, when he appears on the floor of the House to answer questions or make a speech, is a good deal more than a sluiceway through which the brains of his subordinates are permitted to get regular exercise. The sheets which he holds in his hand may have been prepared for him, but the ideas are usually his own, or at least they are colored with his own convictions. And when a vigorous personality—like Winston Churchill or Anthony Eden—takes hold of a department, one can be certain that secretaries and undersecretaries are providing them with neither the substance nor the style of their parliamentary deliverances. Nevertheless the dominant fact remains that the influence of the permanent civil service on the government of Britain is continuous, effective, and one of its most significant features.

ORGANIZATIONS OF PUBLIC EMPLOYEES.

In all countries the question whether members of the civil service should be permitted to affiliate themselves with the regular labor unions has proved from time to time an embarrassing one. An act of Congress, passed in 1912, permits federal employees to join labor unions outside the regular service with the provision that such affiliation entails no obligation to join in a strike. But in Great Britain, since 1927, members of the civil service are forbidden to join any union which includes persons other than public employees. The continuance of this prohibition has been vigorously opposed by the Labor party, but thus far it has remained on the statute book. In trade union circles it was hoped that the report of the Tomlin Commission would recommend a repeal of the 1927 provision, but it did not do so. Meanwhile, however, the members of the British civil service maintain various independent organizations of their own such as the civil service confederation and the union of postal employees.

THE ADJUSTMENT OF GRIEVANCES.

During the years since the close of the World War the adjustment of complaints and grievances within the ranks of the civil service has been delegated to joint local committees or "works" committees, joint departmental councils, and a national council. Each council is made up of representatives, in equal number, from among the higher government and the regular civil service staff. These councils, each in its own sphere, endeavor to adjust grievances concerning pay, promotion, discipline, vacations, overtime work, and so forth. They also promote educational programs for persons in the service. The system of joint coun-

cils in the British civil service is an offshoot from the Whitley p which has been applied to various branches of private industry England.

TECHNIQUE OF BRITISH ADMINISTRATION. In addition to the books li at the close of the preceding chapter, the following will be found us C. T. Carr, *Delegated Legislation* (Cambridge, 1921), W. A. Robson, *Ju and Administrative Law* (London, 1928), F. J. Port, *Administrative Law* (Lon 1929), C. K. Allen, *Bureaucracy Triumphant* (Oxford, 1931), the same thor's *Law in the Making* (London, 1927), especially chap. vii, and J Willis, *The Parliamentary Powers of English Government Departments* (Cambri Mass., 1933).

THE BRITISH CIVIL SERVICE: ORIGIN AND DEVELOPMENT. Dorman Eaton, *The Civil Service of Great Britain* (New York, 1880), and a volum Robert Moses bearing the same title (New York, 1914) give full accoun the system in its earlier stages. W. A. Robson, *From Patronage to Proficien the Public Service* (London, 1922) is also useful in this connection. A vol of lectures describing its various aspects at the present time was publis some years ago under the title *The Development of the Civil Service* (Lon 1922).

PRESENT ORGANIZATION AND WORKINGS. N. E. Mustoe, *The Law and ganization of the British Civil Service* (London, 1932), is the latest com hensive study. Mention should also be made of Herman Finer, *The Br Civil Service* (London, 1927), and attention should also be called to the cussion of the subject in his *Theory and Practice of Modern Government* (2 v New York, 1932), Vol. II, pp. 1163–1514. A concise account of the syst its history and present workings, is that given in F. A. Ogg, *English Go ment and Politics* (2nd edition, New York, 1936), chaps. x–xi. Likewise t is a good outline in Sir John A. R. Marriott, *Mechanism of the Modern* (2 vols., Oxford, 1927), Vol. II, chap. xxvii. A recent volume entitled *British Civil Servant* by W. A Robson and others (London, 1937) finds siderable room for criticism in the existing arrangements. Class prefer and isolation from non-bureaucratic life are particularly commented u

COMMENTS AND COMPARISONS. An account of British Civil Service sonnel Administration may be found in a pamphlet bearing that title Morris B Lambie, which was reprinted from House Document No. 70th Congress, 2nd Session, and issued by the Government Printing O in 1929. Materials for comparison with other countries are printe Leonard D. White, *Civil Service in the Modern State* (Chicago, 1930), an his *British Civil Service* (New York, 1935), as well as in another volume the same author (with others) entitled *Civil Service Abroad: Great Bri Canada, France and Germany* (New York, 1935). Harvey Walker, *Trai Public Employees in Great Britain* (New York, 1935) is excellent and cove

wider range than its title might indicate. Ramsay Muir's volume on *How Britain is Governed* (3rd edition, London, 1935) contains a trenchant criticism of the way in which the civil service has developed into a bureaucracy (pp. 37–80). The chapter on "Government by Amateurs" in Sir Sidney Low's *Governance of England* (pp. 199–217) is both interesting and suggestive. Samuel McKechnie, *The Romance of the Civil Service* (London, 1934) may also be mentioned. Instructive articles on various phases of the civil service appear from time to time in the journal entitled *Public Administration*.

DOCUMENTS. Among public documents are the *Fourth Report of the Royal Commission on Civil Service* (1914), portions of which are printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (New York, 1925), chap. iii, the *Report of the Committee Appointed by the Lords Commissioners of His Majesty's Treasury* (1917), the *Final Report of the Treasury Committee on Recruitment of the Civil Service* (1919), the *Report of the Joint Committee on the Organization of the Civil Service* (1920), and the *Report of the* [Tomlin] *Royal Commission on the Civil Service* (1929–1931).

The Whitley council system is described in Leonard D. White, *Whitley Councils in the British Civil Service* (Chicago, 1933).

For a comparison of the British civil service with that of France, reference may be made to Walter R. Sharp, *The French Civil Service: Bureaucracy in Transition* (New York, 1931), and for a comparison with American practice the most useful book is Lewis Mayers, *The Federal Service* (New York, 1922). Other references may be found in Sarah Greer, *A Bibliography of Civil Service and Personnel Administration* (New York, 1935).

CHAPTER VIII

THE HOUSE OF LORDS

The same reason which induced the Romans to have two consuls makes it desirable that there should be two chambers; that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year.—*John Stuart Mill.*

The British parliament consists of two chambers, known as the House of Lords and the House of Commons. The House of Lords is commonly spoken of as "the second chamber"; but historically it is the first, being the oldest legislative body in the world. It has had a continuous existence, with a single brief interruption, for more than ten centuries. In a previous chapter something was said about the origin and early history of the Lords; it grew out of the Great Council which, in a way, was the successor of the Saxon Witan. Its original members were the magnates of the realm, the great landowners, bishops, and barons. The king on his throne presided over them. There was a time when they had all the powers of parliament on the principle that "those who owned the land should rule it." But democracy fought its way up the centuries and the Lords gradually lost most of their legislative strength. Even at the height of its power the House of Lords was not a very active or aggressive body. During the great crises of English history, according to Gilbert and Sullivan, it "did nothing in particular and did it very well." That is a sure way for a legislative body to lose authority.

THE OLDEST LAWMAKING BODY IN THE WORLD.

THE PEERAGE

To understand the composition of the House of Lords it is necessary to know something about the peerage, what it is and what it is not. On this subject of peers and peerages the average American has rather cloudy notions. He is aware that there is a certain element in the British population known as the nobility, the members of which sometimes marry American heiresses, and he has observed that they have a variety of titles—

THE PEERAGE.

duke, earl, marquis, viscount, baron, and so forth. But what these ranks imply, or which has precedence over the other he usually does not know, nor does he very much care. In the minds of most Americans the peerage is not an institution but an anachronism.

ITS IMPORTANCE.

Yet the student of English government cannot so lightly brush aside those princes and lords who "are but the breath of kings," for both the peerage and the House of Lords have woven themselves deeply into the British political system. The peerage constitutes the top stratum in British society; were it to disappear the social hierarchy of the United Kingdom would have to be recast. The House of Lords is an integral part of the British political and judicial systems; its composition and powers must be understood by anyone who desires to know how the laws are made and appeals decided. Thomas Carlyle once said of the Corn Laws that they were too absurd to have a chapter, so he omitted them. But he did not thereby contribute much to the enlightenment of his readers on matters of fiscal policy. We would think poorly of an Englishman were he to write a treatise on American government with no mention of Tammany Hall, the spoils system, the new deal, or the gerrymander, merely because he regarded these things with a personal aversion. The importance of political institutions is not diminished by ignoring them.

RANKS IN THE PEERAGE.

The term peers originally meant equals, but the British peerage is a body which contains men and women of widely different ranks. It is sometimes said that the princes of the royal family constitute the first and highest gradation in the peerage, but this is not strictly true. The princes, as such, are not members of the peerage at all. But the eldest son of a British king is Duke of Cornwall by birth and becomes Prince of Wales by a bestowal of that title. The king's second son (when he has a second son) becomes Duke of York, and still younger sons have other ducal titles conferred on them. It is as dukes and not as princes that these members of the royal family belong to the peerage of the United Kingdom. As peers of the blood royal, however, they outrank all other peers. So, in reality, there are only five regular gradations in the British nobility—dukes, marquises, earls, viscounts, and barons.

The rank of duke made its first appearance in 1337 when the

Black Prince became Duke of Cornwall. Dukedoms have always been given sparingly, and today there are fewer than thirty dukes in the entire peerage. It is the highest rank that can be conferred upon anyone outside the royal family. Next come the marquises, of whom there are twenty-seven, the earls who number about one hundred and thirty, the viscounts who form a relatively small element (about seventy), and the barons who are the most numerous element, over four hundred and fifty in all.[1] These figures, by the way, do not include members of the Scottish and Irish peerages. Taken all together the House of Lords has about 750 members.

DUKES, MARQUISES, EARLS, VISCOUNTS, AND BARONS.

All ranks in the peerage (with the exception of the law lords and the ecclesiastical dignitaries, as will be explained in a moment) are hereditary. The eldest son of a peer becomes a peer on his father's death; until then he is a commoner, an ordinary citizen, with no special privileges. The younger sons and daughters also pass into the ranks of ordinary citizenship although in many cases they bear courtesy titles.[2] Most

ALL ARE HEREDITARY.

[1] The rank of earl goes back to Saxon times, and that of baron to the Norman period The rank of marquis dates from 1385, and that of viscount from 1442. No new ranks in the peerage have been created, therefore, for nearly 500 years.

[2] These "courtesy" titles add to the outsider's confusion. He reads about the doings of Lord John Russell, Lord Hugh Cecil, and others in the House of Commons and wonders why men with such titles are sitting in the lower House. It means that these statesmen are younger sons, commoners, with courtesy titles. But what are courtesy titles? The matter may be explained in this way: The eldest son of a duke, a marquis, or an earl (but not of a viscount or baron) usually makes use of one of his father's subsidiary titles as a courtesy title during his father's lifetime Nearly every peer in the higher ranks of the peerage has one or more subsidiary titles,—some have nearly a dozen of them. They usually indicate the gradual progress of themselves or their ancestors from the lower to the upper ranks of the peerage Thus the Duke of Devonshire is also Marquis of Hartington, Earl of Burlington, and Baron Cavendish. His eldest son accordingly, is by courtesy known as Lord Hartington, but during his father's lifetime he is not a member of the peerage and does not have a seat in the House of Lords. All younger sons of peers are entitled to the prefix "Honorable," and by a well-recognized social usage the younger sons of dukes and marquises are known as "Lord John So-and-So," or "Lord George So-and-So," as the case may be. The same general rules as to courtesy titles apply to the daughters of peers, except that for some mysterious reason the daughters of an earl are known as "Lady Mary So-and-So" or "Lady Gwendolen So-and-So" whereas their brothers have only the prefix "Hon." Perhaps the most familiar courtesy title of the past generation was that borne by Gladstone's colleague, the Marquis of Hartington.

of those who constitute the peerage have inherited their rank, but new peers are often created by the crown.

THE BRITISH PEERAGE IS NOT A CASTE.

Special emphasis should be given to the point that there is only one peer for each peerage. Save for the one who holds the title all other members of the family are commoners. And save for the one who inherits the title all of them remain commoners. Thus the great majority of those who are born sons and daughters of peers pass into the ranks of common folk and are assimilated there. This, above all things else, has differentiated the British peerage from Continental European institutions of the same general type. In France, before the Revolution, all the children of a nobleman became and remained members of the noblesse. As a result the French nobility grew to be a very large body, with a consequent cheapening of its prestige. Likewise it became a caste, a privileged order, with no overflow into the ranks of the people. In England, on the other hand, the peerage has never been a close corporation. Men who are born commoners become peers; men who are born sons of peers become commoners. This fluidity is its greatest source of strength. Any British subject can become a peer by reason of his own merits, if he possesses them. To that extent the peerage is a democratic institution.

THE LORDS OF PARLIAMENT

BRANCHES OF THE PEERAGE:

1. THE PEERAGE OF ENGLAND.

2. OF SCOTLAND.

3. OF GREAT BRITAIN.

Not all members of the peerage are Lords of Parliament, but only peers of certain designated categories. On the other hand some members, who are not hereditary peers have been given seats. Before the union of England and Scotland in 1707 all English peers of whatever rank sat in the House of Lords, and all Scottish peers sat in the Scottish upper House. By the terms of the union it was provided, however, that while all English peers should continue to have seats at Westminster the peerage of Scotland should be represented by sixteen members only. These sixteen are elected for each parliament by the whole body of Scottish peers, which now numbers less than fifty in all.[1] Eventually the old Scottish peerage will disappear, for no additions

[1] Some of the Scottish peers, however, have titles in the English peerage or in the peerage of Great Britain as well. Thus the Duke of Buccleuch sits in the House of Lords as Earl of Lancaster.

have been made to it since the union of 1707. The same is true of the old peerage of England. Nearly all additions during this period of more than two hundred years have been to the peerage of the United Kingdom which was established at the time of the Anglo-Scottish union.

4. THE PEERAGE OF IRELAND.

The Irish peerage at the time of Ireland's union with Great Britain (1800) was a large body. To have given all these Irish peers the right to sit in the British House of Lords was not thought desirable, so it was provided by the Act of Union that the whole body of Irish peers should select twenty-eight of their members to represent them at Westminster. This selection is not made, as in Scotland, for the duration of a single parliament but for life. The only occasion on which the Irish peers meet to select a representative is, therefore, when one of the twenty-eight dies or becomes disqualified. It was also provided in the Act of Union that the total membership of the Irish peerage should gradually be reduced to one hundred members, and by 1921 this had been accomplished. The treaty which established the Irish Free State made no change in the status of the Irish peerage or its representation in the House of Lords; but vacancies in the quota of Irish peers have not been filled since 1922 and it is assumed that none will be filled hereafter. Thus the representation of the Irish peerage in the House of Lords will gradually pass out.

PRESENT COMPOSITION OF THE HOUSE OF LORDS.

At the present time the House of Lords co[illegible] about seven hundred and fifty members, of whom more th[illegible]ndred are peers of the United Kingdom, whi[illegible] are representative peers of Scotland, and about the same number are representative peers of Ireland. But the House is not composed of hereditary peers alone. Its membership includes, in addition, twenty-six "lords

THE "SPIRITUAL PEERS."

spiritual," namely, the two archbishops of the Established Church (Canterbury and York), together with twenty-four bishops Among these the bishops of London, Durham, and Winchester are always included; the other twenty-one seats are allotted among the remaining bishops in order of seniority, that is, in the order of their appointment to office. When a bishop retires from his ecclesiastical office he loses his right to a seat in the House.

By statute it has also been provided that seven "lords of appeal" shall be appointed peers for life and have seats in the House of Lords. These lords of appeal are chosen from among the distin-

guished jurists of the British empire, and unlike other members of the House of Lords are paid an annual salary. The reason for adding this legal element to the membership is found in the fact that the House of Lords is not only a legislative chamber but a court of appeal from the lower courts of England, Wales, Scotland, and Northern Ireland. And since a body of over seven hundred members, most of them with no knowledge of the law, cannot function as a court, it is necessary to have the judicial work of the House performed by men who have had legal training. The functions of the House of Lords as a court are therefore performed by the "law lords" of the chamber who include not only the seven lords of appeal but the lord chancellor, former lord chancellors, and any other lord of parliament who holds or has held a high judicial office. But these law lords do not form a committee; their sessions are, officially, sessions of the whole House. In theory any member of the House of Lords is entitled to attend and to take part in the hearing of appeals; but of course the lay members never do.

THE LAW LORDS.

Peers of any rank may be created by the crown at any time and without any limit as to number. In other words, the creation of new peers is a matter which the crown decides on the advice of the prime minister. Members of the cabinet may, and do, present names for their premier's consideration. So do others outside the cabinet circle. On some occasions the king has offered a peerage to a retiring prime minister before asking the advice of a new one. A few additions to the peerage are made almost every year. On the other hand, some peerages are extinguished from time to time by the death of peers who leave no eligible male heirs. It is not necessary that there shall be sons to inherit the title; in most cases the peerage will pass, in default of sons or grandsons, to brothers or even to cousins.

HOW NEW PEERS ARE CREATED.

In some instances women have inherited rank in the peerage and a few women have been made peers in their own right. But none of them has yet been permitted to sit in the House of Lords. On two occasions a bill was introduced to give them this privilege but in both instances the Lords ungallantly defeated it by a slender margin. The rules of succession to any title of nobility depend upon the stipulations contained in the original royal patent which created the peerage. The crown may fix these rules at its discretion, but the succession must follow some method of descent already recognized at law.

WOMEN PEERS NOT IN THE HOUSE.

A peerage cannot be resigned or relinquished. The heir must accept his title no matter how much he may be disinclined. If, however, he is under twenty-one years of age when he inherits the title he does not take his seat in the House of Lords till he attains his legal majority. In 1919 Viscount Astor tried to get rid of the peerage which descended to him on his father's death because he wanted to continue his membership in the House of Commons and could not sit in both chambers; but he found that this could not be done except by a special act which parliament refused to pass. And of course a peerage is not transferable, like property, by sale or gift. A peerage by grant (that is, an offer of a new peerage) can be declined, but not a peerage by inheritance. Occasionally some cousin or nephew of a peer, having lived for a long time in America, suddenly finds himself the heir to a title. He can evade his new status only by keeping clear of British soil.

NO RESIGNATIONS.

The granting of peerages is in part determined by custom, but to a larger extent it depends upon the temper of the cabinet, with the prime minister exercising a controlling voice in the matter. Custom dictates, for example, that the prime minister himself, or a speaker of the House of Commons, on retirement from office, shall be offered a peerage. The same applies to ministers who have rendered distinguished public service over a considerable term of years. Thus William Pitt, the elder, became Earl of Chatham; Benjamin Disraeli went to the House of Lords as Earl of Beaconsfield, Arthur J. Balfour was raised to the peerage as Earl Balfour, and Herbert H. Asquith became Earl of Oxford and Asquith. Distinction in fields other than statesmanship also calls for the bestowal of this honor—in the military and naval service, for example. Every student of English history will recall numerous examples such as the Duke of Marlborough, the Duke of Wellington, Earl Nelson, the Earl of Camperdown, Viscount Wolseley, Earl Kitchener, Earl Haig, Earl Beatty, Viscount Jellicoe, and many others. Notable contributions to literature, art, or science are frequently recognized in the same way, as illustrated by the examples of Baron Tennyson, Baron Kelvin, Baron Lister, Baron Avebury (Sir John Lubbock), Viscount Bryce, and Baron Passfield (Sidney Webb). And there are not a few who have crept into the ranks of the peerage by reason of large wealth, judiciously used. Munificent gifts to hospi-

WHO ARE CUSTOMARILY GIVEN RANK IN THE PEERAGE?

tals, educational institutions and philanthropic enterprises, contributions to the party campaign funds, and other forms of largesse have helped to further the ambitions of prospective peers. Not in so many cases, however, as to give warrant for Defoe's sour assertion that:

> Wealth, howsoever got, in England makes
> Lords of mechanics, gentlemen of rakes.
> Antiquity and birth are needless here:
> 'Tis impudence and money makes a peer.

New peerages are usually granted on certain anniversary occasions, the king's birthday or New Year's Day. As a rule the honors are worthily bestowed and the action of the cabinet is generally approved by public opinion, although it sometimes happens that an individual name comes in for newspaper criticism. Some years ago it was predicted that when a Labor cabinet came into office there would be an end to the creating of new peerages. But this proved to be a false prediction. Peers have been made with the Labor party in office, and quite plentifully.[1]

THE PUBLIC ATTITUDE.

Public criticism has been outspoken during recent years in connection with certain elevations to the peerage. In one case a proposed creation was roundly criticized in the House of Lords itself, and the peer-designate is said to have requested that the patent be not issued in this case. At any rate it was not issued. In deference to the general criticism a royal commission was appointed in 1922 to inquire into the whole matter of bestowing these honors and especially into the rumors that certain honors could be bought by any well-to-do citizen who was willing to pay the price in cash. The investigations of this commission disclosed nothing very reprehensible, but parliament in 1925 established a safeguard by making it a misdemeanor "to give or offer, take or ask" any gift or sum as an inducement to procure the grant of a title.

SOME HOSTILE CRITICISM AND ITS RESULTS.

In addition the royal commission recommended that a committee of not more than three members of the privy council, not being members of the government, should be appointed to investigate and report to the prime minister upon each proposed recipient of a peerage or other honors before his name could be submitted to the king. This committee,

THE NEW SAFEGUARD.

[1] Twenty-one of them during the years 1929–1931.

it was provided, should particularly inquire as to his party contributions. In the event of the committee reporting unfavorably the prime minister might nevertheless submit the name to the king, but must inform His Majesty of the unfavorable report. The recommendations of the royal commission were adopted; a committee of the privy council was appointed, and all names proposed for honors are now given a careful scrutiny by it.[1]

KNIGHTS AND BARONETS.

Knights and baronets are not members of the peerage, although the rank of baronet is hereditary. Knighthoods are bestowed for life only. They are of several categories, such as Knight of the Order of St. Michael and St. George (K.C.M.G.), or Knight Commander of the Order of the Bath (K.C.B.). A knight uses his given name and surname, with the prefix "Sir"; a baronet does the same, with the abbreviation Bart. after his name.

Men who are already baronets or knights are sometimes promoted to the peerage, but this is not the usual course. As a rule those who are made peers have had no previous title of honor although they frequently have been members of the House of Commons or have held other public offices. In the great majority of cases a commoner who becomes a peer must be satisfied with the lowest grade, that is, with the rank of baron, but occasionally a commoner of high distinction is made a viscount, or even an earl, in his initial patent of nobility.

CHOOSING A TITLE.

The recipient of a peerage is permitted, with certain limitations, to choose his new appellation. Very often he takes it from some place with which he has been connected by residence or with which he has had some political connection. Thus Sir F. E. Smith, when he became an earl, chose the title Lord Birkenhead because he had been member of the House of Commons for Birkenhead. Some retain their family patronymic, as Field Marshal Haig did when he became Earl Haig. Provided the title has not been already assumed by some other peer, and provided also that by custom no peer below the rank of earl may take for his title the name of a county or county town, he has a free choice. The new peer's wife usually helps him decide the matter, it is said, and properly so, for the wife of a peer like the wife of a commoner is saddled with her husband's

[1] See the interesting discussion of "Titles and Honours" in W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936), pp. 351–360.

name. Here is an opportunity to do something that satisfies both halves of the household. A peerage, of course, does not come out of the clear sky, and the future title has usually been discussed and settled in conjugal conclave before it arrives.[1]

The grant of a new peerage, as has been said, may be declined, although peerages by inheritance may not, and declinations have sometimes taken place. Gladstone afforded a conspicuous example. On more than one occasion he was pressed to accept a title of nobility but steadfastly refused, even after he retired from public life. But his great antagonist, Disraeli, accepted a peerage because his health prevented him from continuing to bear the strain of leadership in the House of Commons. Rank in the peerage carries no salary from the public treasury, and members of the House of Lords receive no remuneration for their services. But most peers are well-to-do and many of them figure prominently among the landowners and captains of industry in England. To maintain the dignity and manner of living customary among members of the peerage requires a considerable income, for even a baron ought to maintain two establishments, one in London and another in the country.

GLADSTONE AND DISRAELI.

Members of the House of Lords have various privileges and are under certain disabilities. Freedom of speech and freedom from arrest while the House is in session extends to the Lords as well as to the members of the lower chamber. For many centuries it was a rule of law, dating back to the Great Charter of 1215, that a peer could only be tried by his fellow peers and hence was not amenable to the ordinary courts. When, therefore, a member of the House of Lords was charged with a serious offense his case was heard and determined by his fellow members in that House. The last occasion on which the House served in this capacity was more than thirty-five years ago, and the privilege is now abolished.

PRIVILEGES OF PEERS.

[1] Tastes differ as widely in names as in attire. Disraeli, as has been said, chose to be known as Earl of Beaconsfield; Sir Donald Smith became Lord Strathcona; Sir Max Aiken chose the title of Baron Beaverbrook. Ignatius O'Brien, in 1918, decided that Baron Shandon would suit his taste; a little earlier Sir Michael Hicks-Beach became Viscount St. Aldwyn. Kitchener, Beatty, and Jellicoe deemed their old names good enough. When a new title is selected the old family patronymic is retained for the use of the daughters and younger sons. The family name of the Bedfords is Russell; that of the Salisburys is Cecil; that of the Aberdeens is Gordon; that of the Norfolks is Howard, and that of the Devonshires is Cavendish.

Members of the peerage have no votes at parliamentary elections. Nor, with one exception, are they eligible as candidates for the House of Commons. The exception (an important one) extends to all Irish peers who are not among the Irish representatives in the House of Lords. Any such Irish peer may be elected from an English (but not from a Northern Ireland) constituency. The disqualification from candidacy does not extend in any case to the members of a peer's family, but only to the holder of the title. Even the eldest son of a peer, the heir-apparent to the title, may be elected to the House of Commons during his father's lifetime. But on succeeding to the title he must vacate his seat in the lower chamber. Sons of peers have figured prominently in the Commons on many notable occasions and in some cases have been its leaders.

PEERS DO NOT VOTE AT PARLIAMENTARY ELECTIONS.

PROCEDURE AND POWERS

The House of Lords meets in its own chamber at Westminster. It is an impressive meeting-place, the most handsome legislative chamber in the world, richly upholstered and dowered with a soft light that filters through the magnificent stained-glass windows. There is an air of leisure and luxury about it. The sessions of the Lords are coincident with those of the Commons. When the lower House ends its session the upper chamber does likewise; but each House can adjourn separately. Sessions of the House of Lords are presided over by the lord chancellor who is appointed by the crown upon the advice of the prime minister. He sits on a large couch or divan known as the Woolsack [1] and puts motions, but he does not have any disciplinary powers. He does not even have the power to recognize peers who desire to speak. When two of them rise simultaneously the House decides, if necessary, whom it will hear. This restriction of the presiding officer's power dates back to the time when the lord chancellor was not a peer but merely an officer of the king's household. Even yet, as has been said, there is no legal requirement that he shall be a member of the House, although he usually is such.

THE HOUSE OF LORDS IN SESSION.

ITS PRESIDING OFFICER.

[1] The term Woolsack originated in the reign of Elizabeth when a statute was passed prohibiting the exportation of wool from England. The judges in the House of Lords, in order to show their approval of the measure and to emphasize the desirability of creating a home market for English-grown wool, had their bench stuffed with it.

The House of Lords meets regularly on Tuesdays, Wednesdays, and Thursdays. Sessions are often held on Mondays also, and more rarely on Fridays. The sittings do not usually last more than an hour or two and as a rule they are slimly attended. Out of the seven hundred and fifty members not more than thirty or forty usually attend except when matters of some importance are to be discussed. It is said that more than two thirds of the Lords attend fewer than ten sittings a year. Three members constitute a quorum to do business, but at least thirty must be present in order to pass any bill. In the latter part of the session, however, when bills come up from the Commons the daily sittings last longer and are better attended. The proceedings are traditionally dull, although the "full-dress debates" now and then are of high quality; few questions are ever asked; there are no estimates of expenditures to be discussed, and the recommendations of committees are ordinarily accepted with little or no dissent.

ITS SESSIONS.

On the other hand the rules of the House are so liberal that it is possible for any peer to initiate a debate, at almost any time and on any matter of public importance, by "moving for papers," that is, offering a resolution asking that certain official documents be laid before the House. In this way public attention may be drawn to any question and a full discussion may be had in the Lords at a time when the pressure of business in the Commons precludes a long debate there. During such discussions the standards of debate in the Lords are quite up to (or even above) those of the popular chamber, for the House of Peers contains a number of good speakers. What is more, they are men who speak to the point. Speeches in the House of Lords are not made for the benefit of the press gallery. A peer has no constituents to humor or impress. He represents no one but himself. Politically the House of Lords is one-sided, the Conservatives being in an overwhelming majority. There is never any doubt as to the outcome of a vote when party lines are drawn; but on most questions the House does not divide that way.

ITS RULES AND DEBATES.

The House of Lords has two special powers which it does not share with the House of Commons. First, it is a supreme court of appeal for the hearing of certain civil and criminal cases, but its judicial work is performed by a very small proportion of its membership, as has been shown. In the second place it is the body which hears

SPECIAL POWERS OF THE HOUSE OF LORDS.

and determines impeachments brought by the House of Commons.

IMPEACHMENTS.

This is an ancient prerogative of the Lords; it goes back to the days of the Saxon Witan. Before the development of ministerial responsibility it was a function of great importance inasmuch as it afforded the only means of calling the king's advisers to account. It was through the power of impeachment that parliament managed to acquire its control over the actions of the crown. During many centuries this power was freely used, but it has now dropped into abeyance. One can scarcely conceive of a situation, under the existing parliamentary system, in which it would be necessary to impeach any British official. A vote of the House of Commons requesting his removal from office would be enough, for no ministry could deny such a request and remain in office.[1] And if it should be necessary to penalize any public officer, otherwise than by removal from office, the ordinary courts afford an adequate process.

LEGISLATIVE FUNCTIONS: INTRODUCTION OF BILLS.

Aside from financial measures any public bill may be introduced in the House of Lords Financial measures must originate in the Commons. As a matter of usage, however, very few legislative proposals except private bills (see Chapter XII) ever get their first reading in the upper chamber. Nine tenths of the public measures begin their journey in the Commons. The result is that during the early weeks of a session the Lords have almost nothing to do. Then, as the House of Commons gets into its stride, the bills come up in larger numbers and for a time the peers are amply provided with work. It has frequently been proposed that the cabinet should fairly apportion the introduction of government measures to both chambers, thus avoiding idleness at the beginning of a session and congestion at the end; but this suggestion has not found favor. There would be little advantage in setting the Lords to work on important measures until after the attitude of the lower chamber has been determined.

THE CONTROVERSY WITH THE COMMONS

Until 1911 it was technically the privilege of the Lords to reject any bill, even a money bill. But by non-use the upper House had

[1] This, of course, would not include the judges, who are removable only on an address or resolution of both Houses.

lost its right to amend any financial measure, and in the opinion of many constitutional lawyers it had also lost, by non-use, its right to reject such a measure—although the Lords themselves had never conceded this loss. As to bills other than money bills there was never any question, prior to 1911, that the House of Lords might both amend and reject anything sent up by the Commons. The power of rejection was, in fact, used on many momentous occasions during the nineteenth century, notably in the defeat of the first reform bill (1831) and the second Irish home rule bill (1893). In such cases there was no way in which the Commons could make its will prevail against the opposition of the Lords. To be sure there was one potential method of achieving this end, but it was so drastic as to preclude its use on any save the most critical occasions. The method involved the creation of enough new peers to swamp the opposition in the Lords.

REJECTION OF BILLS SENT UP BY THE COMMONS.

THE OLD ARRANGEMENT.

Under ordinary conditions, when the House of Lords rejected a measure that had been passed by the Commons there was some grumbling in the lower chamber but nothing happened. If the rejected bill was an important government measure, introduced by the ministers and passed under their guidance, the prime minister could advise a dissolution of parliament and a general election on the issue. This would put the matter before the high court of public opinion for judgment. Then, if the people upheld the ministry, the Lords were expected to give way, which they usually did.

HOW IT WORKED.

It was not until 1909 that a deadlock between the Lords and Commons arose in such form and assumed such bitterness as to compel the making of a new provision. In the autumn of that year Mr. Lloyd George, then chancellor of the exchequer in the Liberal ministry, brought forward a finance bill or budget which proposed the levy of certain new taxes, more particularly some new taxes on land. As these taxes would bear heavily upon the owners of large estates, the House of Lords rejected the measure and also defeated various other bills which had been passed by a majority in the Commons. The lower House showed its resentment by adopting a resolution which declared the action of the Lords to be a breach of the constitution and a usurpation of the privileges of the House of Commons. But the Lords stood their ground and the

THE CONFLICT OVER THE LLOYD GEORGE BUDGET.

prime minister decided to request an appeal to the voters. Accordingly a general election took place in the early days of 1910. During this campaign the question of "clipping the wings" of the Lords formed an important issue. The Liberals were successful at the polls and having repassed the finance bill in the Commons, sent it for the second time to the upper chamber, whereupon the Lords accepted the verdict of the country and gave their assent to the measure.

But the Liberals were determined that the relations between the two chambers should be clarified in such way that it would no longer be necessary to hold a general election in order to make the Lords knuckle under. Accordingly a measure designed to limit the powers of the Lords was introduced by the ministers into the House of Commons. This bill contained four chief provisions. *First*, it stipulated that money measures, when passed by the House of Commons, should become law one month after such passage, even though the Lords should withhold their concurrence. *Second*, it gave a definition of money bills and made provision that in case of disagreement as to whether a bill came within the definition the decision of the speaker of the Commons should be conclusive.[1] *Third*, it provided that any other public bill passed by the House of Commons in three consecutive sessions, with an interval of at least two years between its first and final passage, should become a law on receiving the assent of the crown notwithstanding the failure of the Lords to approve the measure.[2] *Fourth*, it enacted that the maximum duration of a parliament should henceforth be five years instead of seven. Parliament, how-

THE PARLIAMENT ACT OF 1911.

[1] The definition is as follows: "Any public bill which, in the judgment of the speaker, contains only provisions dealing with all or any of the following subjects: the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by parliament, or the variation or repeal of any such charges, supply; the appropriation, receipt, custody, issue or audit of accounts or public money, the raising or guarantee of any loan or the payment thereof, or subordinate matters incidental to those subjects or any of them."

[2] It is stipulated that this provision shall not apply to any measure extending the duration of parliament beyond its present maximum of five years, or to certain other specified measures The two-year interval, to be exact, must elapse between the date of the first occasion on which the bill receives its second reading in the Commons and the date of its final passage for the third time. The House of Commons is authorized to direct in any bill, if it so desires, that the measure shall not become law unless and until it receives the assent of the Lords.

ever, can at any time extend its own existence beyond this five-year term if an emergency so requires, and the very parliament which passed the Act of 1911 did this during the World War—prolonging its own life for nearly eight years and thus giving a good example of what a British parliament can do without having its actions declared unconstitutional.

ITS ACCEPTANCE BY THE LORDS.

Under the title of the Parliament Bill, this measure for curbing the powers of the upper chamber was passed by the Commons and sent to the Lords. The latter, hardly daring to reject the bill without offering some constructive measure of reform in its place, adopted resolutions embodying an alternative scheme. The ministry thereupon served notice that another general election would be held unless the Lords accepted the bill and this threat was presently carried into effect. Once more the country stood by the Liberals and their allies, the Laborites and Irish Nationalists and thus assuring the enactment of the reform measure. Not, however, without a renewed flicker of resistance from the upper chamber which had to be cowed into submission by a threat to create new peers,—as many as might be needed to pass the bill. In the end many of the opposition Lords abstained from attendance and the measure passed by a rather narrow margin amid scenes of intense excitement. The Parliament Act of 1911 embodied the most important change that had been made in the constitution of Great Britain for more than a century.[1]

PROPOSALS OF REFORM

PROPOSALS FOR THE REORGANIZATION OF THE UPPER CHAMBER.

Proposals to change not only the powers but the composition of the House of Lords have been made on many occasions, especially during the past half century. The British House of Lords is like the Supreme Court of the United States in that any unpopular action is promptly followed by a clamor for a change in its structure or authority. The rejection of various measures during the eighteen-nineties stirred up much popular antagonism among the Liberals, but when the Conservatives came forward with a proposal to decrease the hereditary element in the House of Lords by the introduction of life peerages the Liberals did not take kindly to the plan. Again, in 1908–1911, when the Lords were in collision with the

[1] A full account of the long-drawn-out controversy between the two Houses is given in Emily Allyn, *Lords versus Commons* (New York, 1931).

Liberal ministry, various other projects of reform were broached. The most notable of these was the Lansdowne plan which contemplated a House of about 330 members, partly of peers and partly of laymen, chosen by a rather complicated process.[1] This was intended as an olive branch to the Liberals in the endeavor to halt the enactment of the Parliament Bill, but it was coldly rejected. Other proposals were put forward from various sources and in the end a parliamentary committee or conference under the chairmanship of Lord Bryce was appointed to study them all. It consisted of thirty members drawn in equal numbers from the House of Lords and the House of Commons, and representing all three political parties.

THE LANSDOWNE PLAN.

This conference, in 1918, made a long report with some definite recommendations.[2] It recommended that the upper chamber be reduced in size and that it be constituted of two elements, one third of the members chosen from the peerage and two thirds by the House of Commons voting according to regional groups. The term of members was to be twelve years with one third of the membership chosen quadrennially. In case of disagreement between this second chamber and the House of Commons it was recommended that the matter be referred to a joint conference made up of thirty members from each chamber. This report met strong opposition, particularly against the proposal for settling disagreements by joint conference.

THE BRYCE PLAN.

Instead of urging these recommendations, therefore, the cabinet appointed a committee of its own members to consider the question and in 1922 five resolutions were submitted to the House of Lords for discussion.[3] But the Lords displayed no enthusiasm for the ministry's plan and it also met with a rather frigid reception in the country at

THE PROPOSED RESOLUTIONS OF 1922.

[1] One hundred peers were to be chosen by the whole body of the peerage, one hundred persons were to be appointed by the crown either from the peerage or outside, one hundred and twenty persons were to be elected by members of the House of Commons sitting in regional groups. Five bishops were to be chosen by the whole body of bishops

[2] The report is printed in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp 576–601. A full discussion of its merits and defects may be found in H B. Lees-Smith, *Second Chambers in Theory and Practice* (London, 1924), pp. 216–235.

[3] The following were the resolutions:

1. That this House shall be composed, in addition to peers of the blood royal, lords spiritual, and law lords, of: (a) members elected, either directly or indirectly, from the outside; (b) hereditary peers elected by their order, and (c) members

large. There was a feeling that it would be unwise to do any half-hearted reforming of the hereditary House, especially when such action involved an increase of its powers. At any rate the five resolutions were pigeonholed when the Lloyd George coalition ministry went out of office in 1922.

SUBSIDENCE OF THE MOVEMENT FOR REFORM.

There the matter has rested during the intervening years. From time to time discussions of the matter have taken place in the House of Commons, but nothing tangible has come of them. These discussions indicated a good deal of feeling that the House of Lords ought to be reorganized, but they also disclosed a wide divergence of opinion as to what form the reorganization should take. At least a dozen plans for reforming the House of Lords have been brought forward from various quarters and discussed, but all of them seem to be open to serious practical objections.

THE FUTURE OF THE HOUSE.

So the organization of the House remains unchanged. It has found salvation in the fact that none of the proposed substitutes seems to promise improvement. It is probably true, as John Bright once said, that a hereditary House of Peers cannot endure forever in a free country, yet it will doubtless continue to endure until something to take its place is devised and agreed upon. Englishmen, as a rule, prefer to bear the ills they know than to fly to others they know not of. It is not practicable to have an upper House constituted like the Senate

nominated by the crown, the numbers in each case to be determined by statute.

2. That, with the exception of peers of the blood royal and the law lords, every other member of the reconstituted and reduced House of Lords shall hold his seat for a term of years to be fixed by statute, but shall be eligible for reëlection.

3. That the reconstituted House of Lords shall consist approximately of 350 members.

4 That while the House of Lords shall not amend or reject money bills, the decision as to whether the bill is or is not a money bill, or is partly a money bill and partly not a money bill, shall be referred to a joint standing committee of the two Houses, the decision of which shall be final. That this joint standing committee shall be appointed at the beginning of each new parliament, and shall be composed of seven members of each House of Parliament, in addition to the Speaker of the House of Commons who shall be ex officio chairman of the committee.

5. That the provisions of the Parliament Act, 1911, by which bills can be passed into law without the consent of the House of Lords during the course of a single parliament, shall not apply to any bill which alters or amends the constitution of the House of Lords as set out in these resolutions, or which in any way changes the powers of the House of Lords as laid down in the Parliament Act and modified by these resolutions.

of the United States because Great Britain is not a federal state. The method used in constituting the French Senate would be practicable in Great Britain, but that body is not regarded by Englishmen as a model worth copying.

THE BASIS OF A BICAMERAL SYSTEM.

Most people agree that an upper chamber in any well-organized government should serve as a check on the lower chamber, that it should provide a safeguard against hasty and ill-considered legislation. For that reason the members of the two chambers ought not to be chosen from the same districts in exactly the same way. On the other hand they ought not to be selected in such widely different ways that the two chambers will reflect irreconcilable points of view and get themselves into continual deadlocks. How to organize the two chambers on a different basis, yet on a basis not too different—that is a problem which Great Britain has not yet been able to solve.

WHY NOT A SINGLE CHAMBER?

But why not abolish the upper House altogether and get along with a single chamber? The members of the Bryce Conference were unanimous in their belief that such action would be unwise. They agreed that there are at least four distinct and essential functions that cannot be well performed save by a second chamber. These four functions are as follows:

1. The examination and revision of bills brought from the House of Commons, a function which has become more needed since, on many occasions during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.

2. The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.

3. The interposition of so much delay (and no more) in the passing of a bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be specially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or which raise issues whereon the opinion of the country may appear to be almost equally divided.

4. Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of executive government.

Englishmen are in the habit of saying that the House of Lords represents *nobody* while the House of Commons represents *everybody*. But if the House of Lords were "reformed" and given a representative character the situation would be different. Then it would represent *somebody*. Like the American Senate it would attempt to take a coördinate share in legislation. The House of Commons would no longer have supremacy; it would merely be part of a system of checks and balances. Naturally the Commons does not want a reform of that sort. It does not desire to build up a competitor of its own kind. "I don't want to say a word against brains," says one of the characters in Gilbert and Sullivan's *Iolanthe*, "but with a House of Lords composed exclusively of people of intellect, what's to become of the House of Commons?" That, indeed, is what the commoners want to know.

NOBODY AND EVERYBODY.

So the strength of the House of Lords, paradoxical as it may sound, arises from its weakness. By becoming weaker it has grown strong. At best it can now delay legislation; it can no longer thwart the will of the popular House. With its fangs drawn it is no longer a menace to democracy, hence the need for reform has lost much of its urgency. It is an anomaly, of course, that so small a body as the British peerage should bulk so large in the affairs of a great nation, but no American need cross the Atlantic to find anomalies in an upper chamber. That one duke should have the equivalent of a thousand votes cast by plain citizens is an absurdity, to be sure, but it is just as grotesque that Nevada, with a population of eighty thousand, should have the same representation in the Senate of the United States as New York with ten million. Americans will explain, of course, that this is because it is so stipulated in the Constitution of the United States, to which Englishmen will reply that the hereditary structure of the House of Lords has been embedded in the Constitution of Great Britain for ten times as long.

A STRENGTH THAT ARISES FROM WEAKNESS.

THE VALUE OF THE UPPER CHAMBER

The essential functions which a second chamber ought to perform have been stated in the preceding pages. To what extent does the House of Lords perform them satisfactorily? On the whole it appears to be doing its job fairly well. It examines and revises nonfinancial measures. It insists, when the occasion arises, that ample time be given for a full public discussion of such bills before they be-

come part of the law of the land. It compels sober second thought and gives opportunity for passions to subside. It says, now and then, to the House of Commons: "The opinion of the country seems to be about equally divided on this matter. Suppose you hold up the bill until the people have a chance to discuss it further." It is rarely alleged in England, as it is so often in the United States, that measures are railroaded through. On the other hand the House of Lords has not shown itself disposed, during recent years, to go beyond its province and obstruct the passage of measures which the country is clearly in a mood to accept. It has accepted the diminution of its powers with as good grace as one might expect peers of the realm to show. Its members no longer feel irritated because great questions of public policy are virtually being settled by the House of Commons alone. To quote once more those comic opera interpreters of the British constitution, Gilbert and Sullivan:

GENERAL UTILITY OF THE HOUSE OF LORDS.

The noble statesmen do not itch,
To interfere in matters which
They can not understand.

The procedure followed by the House of Lords in considering the various measures which come before it is different from that of the Commons. In the Lords there are no standing committees for public bills. All bills, after two formal readings, are debated in Committee of the Whole House before being read a third time. Debates in the House of Lords, when they take place, cannot be shut off by using the closure. If amendments are adopted in the upper House, the measure goes back to the Commons for concurrence. Then the Commons either agrees to the amendments, or insists on its own way, or some compromise is reached by an informal conference. Failing this, the bill is deemed to have been rejected, and the Commons must then decide whether the measure is of sufficient importance to warrant its repassage in accordance with the procedure laid down by the Parliament Act.

THE COURSE OF BILLS IN THE LORDS.

There is a common impression that the House of Lords, being composed for the most part of men who have inherited their titles, is inferior to the House of Commons in the quality of its membership. Taking the entire personnel of the two chambers and striking an average, this impression may be correct, but if one were to select, let us say, the fifty

THE HIGH PERSONNEL OF THE HOUSE.

ablest members of the Lords and set them alongside an equal number of the best drawn from the Commons, the Lords would not suffer by the comparison. The upper House contains in its ranks some of the foremost statesmen, jurists, theologians, scholars, financiers, and industrial magnates of the kingdom. Many of its members have been trained by long years of service in the diplomatic corps, in India, or in the colonies. These are the men who do the business of the House. Of course there are peers, plenty of them, who possess neither ability, interest, nor experience in public affairs; but most of these spend their hours elsewhere. They rarely darken the doors at Westminster, or if they do, they are wholly inactive in the proceedings. The peers who regularly warm the red benches and speak the mind of the upper House are men who have graduated from the Commons, or who have administered imperial dominions, who have sat in cabinets or presided in high courts or gained their peerages by some other form of conspicuous service.

A PART OF THE ROLL CALL.

Is there an upper house in any other country that has included among its members during the past forty years a more striking or more diversified array than is represented by Salisbury, Lansdowne, Grey, Balfour, Asquith, Birkenhead, Reading, Tennyson, Kelvin, Bryce, Playfair, Lister, Cromer, Milner, Curzon, Haldane, Kitchener, Haig, Rothschild, Beaverbrook, Northcliffe, and Passfield? Some of these, it is true, never took much part in the debates, for they were not politicians in any sense of the term. But the mere presence of these names on the roll of the House would at least seem to indicate that the chamber which some Englishmen (and most Americans) would believe to be ripe for reform possesses its fair quota of brains and eminence. It is not without reason that the House of Lords has sometimes been called "the Westminster Abbey of living celebrities."

So while the House of Lords is unrepresentative in the usual sense of the term it is not altogether unrepresentative of the best in British national life—in industry, finance, agriculture, commerce, law, religion, and scholarship. There are plenty of low-voltage peers, it is true, but most of them stay away from parliament. And there are also some men of the same quality in the Senate of the United States,—but they do not stay uncounted when the roll is called.

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Proposals of Reform. The various proposals to reform the House of Lords are dealt with in W. S. McKechnie, *The Reform of the House of Lords* (Glasgow, 1909), W. L. Wilson, *The Case for the House of Lords* (London, 1910), C. Headlam and A. D. Cooper, *House of Lords or Senate?* (London, 1932), Lord Merrivale, *The House of Lords: Its Record and its Prospects: Possible Reforms* (London, 1935), A. L. Rowse, *The Question of the House of Lords* (London, 1934), and the *Report of the Conference on the Reform of the Second Chamber* (1918), commonly known as the Bryce Report.

CHAPTER IX

THE HOUSE OF COMMONS: THE SUFFRAGE

The individual is foolish, and the multitude for the moment is foolish when it acts without deliberation, but the species is wise,—and when time is given to it, always acts right.—*Edmund Burke.*

THE LONG STORY OF THE SUFFRAGE.

A history of voting would be a history of government, indeed a history of civilization. But if anybody with an antiquarian turn of mind should desire to study the evolution of the suffrage from primitive times to the present, no country would afford him a better field for his purpose than Great Britain Men have been voting in that kingdom, under a variety of conditions and restrictions, for about a thousand years. There has been no break in this continuity, even during epochs of civil war and revolution. Representative institutions passed out of existence in the great countries of the Continent during the seventeenth and eighteenth centuries but in Britain they hung on, although at times by a rather precarious grip. There has never been a single year, from the time of Alfred the Great to the present day, in which Englishmen did not elect somebody to represent them somewhere—in townshipmote or county court, in borough council or House of Commons.

THE BEGINNINGS OF POPULAR SUFFRAGE.

Mention has been made of the fact that knights of the shire, chosen by the representatives of the freeholders in the county court, were summoned to the Great Council at various times during the thirteenth century and that these county representatives became in time a regular element in parliament. It will also be recalled that the boroughs were summoned to send representatives to parliament and that these borough representatives combined with the knights of the shires to form the House of Commons. The knights were chosen at the meetings of the county court by the common assent of all the freeholders of the county; the borough representatives were elected by all the burgesses or freemen of the borough. British parliamentary suffrage began, therefore, on a basis that was at least democratic

in theory, with no precise distinction between the qualifications for voting in counties and boroughs. This was not the result of a revolution in 1215 or at any other date. The Great Charter may have been revolutionary in some of its provisions but it extended the suffrage to nobody who did not have it before. The right of the freeman to have a voice in the election of his local rulers far antedated the victory of the barons over John Lackland. It was, in theory at least, the earliest basis of English local government.[1]

But the suffrage did not forever remain democratic, even in theory. In the reign of Henry VI (1429) provision was made that none should vote in the counties except those who held freehold land with a rental value of at least forty shillings per year. This was a sweeping disfranchisement inasmuch as many freehold estates, perhaps the majority of them, had a rental value of less than forty shillings. The "forty-shilling-freeholder," however, determined the election of members of the House of Commons in the counties of England from that date to the passage of the Great Reform Act in 1832.

THE REACTION AGAINST IT.

Meanwhile the suffrage in the towns was also narrowed, although not as a result of any special enactment. The theory that every freeman had a right to vote remained in existence, but the definition of a freeman became steadily less comprehensive. In some towns the list of freemen was confined to those who held land under certain forms of tenure, or who paid certain forms of local taxation. In others it was whittled down to gild-members or members of certain industrial organizations. In some boroughs, indeed, men could only acquire "the freedom of the town" by being born the son of a freeman, or by marrying a freeman's daughter, or by paying a fee into the town treasury. In very few towns were the requirements exactly alike; each developed its own rules, precedents, and practice. But in general, during the interval between the fifteenth and the nineteenth centuries, the borough suffrage everywhere grew more restricted; this development being assisted by the king who desired to control the House of Commons and found that towns with few voters could be more easily controlled than those which had a large number.

HOW THE SUFFRAGE WAS NARROWED.

Now it may seem at first glance surprising that the masses of the

[1] For a full account of English mediaeval suffrage and elections see M. McKisack, *The Parliamentary Representation of the English Boroughs during the Middle Ages* (New York, 1932).

people, both in country and town, should have permitted the franchise to be so easily taken away from them. But this is only because in modern times the people have come to look upon the suffrage as something worth fighting for. Nobody looked upon it in that light five hundred years ago. No salaries were then paid to members of parliament from the national treasury; each county or town had to defray the cost of its own representation. Often the election went to anyone who could be induced to pay his own expenses. Sometimes there was great difficulty in getting anybody to do this. Hence towns occasionally sent petitions to the king asking that they be relieved of the burden of sending representatives to parliament. Much oratory has been spilled in declamations about the way "our Anglo-Saxon forefathers fought for the right to vote," but the sober prose of it is that nobody thought the right to vote worth fighting for until about a couple of hundred years ago.

MEDIAEVAL ELECTIONS IN ENGLAND.

It was only when the House of Commons began to get the upper hand in government that representation in it came to be looked upon as a privilege.[1] Meanwhile the suffrage requirements had become chaotic. In the counties every forty-shilling-freeholder was entitled to vote, but there were many different forms of freehold tenure. In some towns the right to vote had been granted to nearly all the adult male inhabitants; in others not one per cent of the population were "freemen of the town." In some boroughs the suffrage included all "pot-wallopers," that is, all adult males who had possession of any premises in which food could be cooked. So it often happened that when a man's house burned down he left the chimney standing and on the eve of an election might be seen kindling a fire in it as evidence of his political qualification. In others none but members of the municipal corporation could vote. Membership in this corporation might be obtained by birth, by marriage, by purchase, by grant,—in a dozen different ways. Every town was a law unto itself. Whether a man could vote depended on where he lived.

SUFFRAGE RULES BECOME CONFUSED.

Representation in the House of Commons, moreover, was not distributed according to population; every county and every borough, whatever its size, had two members. Under these conditions it is a travesty on the facts to say that the House of Commons, prior

[1] For a full account see P. A. Gibbons, *Ideas of Political Representation in Parliament, 1651–1832* (Oxford, 1914).

to the great reform of 1832, represented the people of Great Britain. The total population of Great Britain and Ireland in 1831 was about twenty-four millions, of whom nearly ten millions would have been entitled to vote under a system of universal suffrage. As a matter of fact the number of those who actually possessed the right to vote was less than a million, and probably a good deal less. England during the first quarter of the nineteenth century was not a democracy in fact. Nor was the United States for that matter. Both countries were governed by the upper classes of society. As Blackstone put it, England was ruled by "the gentlemen of the kingdom."[1]

GOVERNMENT BY THE FEW.

The worst feature of English government at this time was not the narrowness or diversity of the suffrage but the gross inequality of the counties and towns which sent two members each to parliament. No general redistribution of seats had been made for a long time. Meanwhile some boroughs and counties had stood still or diminished in population, while others had greatly increased. The Industrial Revolution, with its introduction of steam power and smoke-belching factories had changed the face of the country. It drew off population from some rural districts until they had almost no inhabitants at all, on the other hand it crowded tens of thousands into the newer factory towns such as Manchester, Birmingham, Leeds, and Sheffield. Yet the depopulated boroughs kept sending members to parliament while the new centers of population got no increased representation and in some instances had no representatives at all. This was not the result of a sinister design on anybody's part; it was merely the product of the great economic change. Population had shifted; the distribution of seats in parliament had not. It was the old story of laws and political institutions failing to realize that a new era had come.

INEQUALITY OF REPRESENTATION IN PARLIAMENT

The result was a horde of "rotten boroughs" all over the country. Most of these were old towns from which the inhabitants had departed, leaving only the ruins of their homes and a well-filled graveyard behind them. What had been thriving towns at the beginning of the eighteenth century were being turned into sheep farms at the beginning of the nineteenth,—raising wool for the new steam factories. "The

THE "ROTTEN" BOROUGHS.

[1] See the panegyric on the government of England which concludes Book iv of Blackstone's *Commentaries*.

shepe have become such greate devowerers and so wilde" lamented one writer of the time, "that they pluck up and swallow down the very men themselves." Old Sarum was the classic example of these blighted constituencies, a flourishing place in older days, which began to slip during the eighteenth century and drifted into the nineteenth without a single house inhabited. It had seven "freemen," however,—all of them non-residents, and these seven retained the right to elect two members of parliament. They did it, of course, from among themselves. The borough of Corfe Castle was another ghost town; on the eve of the great reform it consisted of a ruined manor house and a few dilapidated outbuildings. The owners of this ramshackle property likewise elected a brace of members to the House of Commons.

OLD SARUM AND CORFE CASTLE.

The borough of Downton lived up to its name, for it was down under water, the sea having swept over it and made it an uninhabitable salt-marsh; but this catastrophe did not mean that Downton stopped sending members to parliament. A few non-resident freemen attended to that. Malmesbury had thirteen voters, no one of whom could read or write. They voted by a show of hands. The Scottish constituency of Bute, however, was the prize pocket borough of them all. Its list of freemen contained one name. On election day this lone voter regularly appeared at the polling place, called the roll, answered to his own name, moved and seconded his own nomination, put the question to a vote, and was unanimously elected a member of parliament.

DOWNTON, MALMESBURY, AND BUTE.

These decayed boroughs naturally fell a prey to speculators who bought them for the sole purpose of controlling the representation. In this way a parliamentary bootlegger sometimes managed to get a half dozen or more seats into his possession. The seats then became his "patronage" to sell or give away as he saw fit. Hence the origin of a term which has passed into the political vernacular of all English-speaking peoples. There is not much difference, in fact, between the English patron of a century ago and the American political boss of today. Often the patron had an eye to profit and put up the seats for sale to the highest bidder. This was not done *sub rosa*, but by open advertisement in the newspapers. There was a great demand for these seats, especially among the "nabobs" as they were called, men who

THE SPECULATION IN SEATS.

had returned from India after making their fortunes.[1] By spirited bidding they ran the prices up to a high figure and sometimes as much as three thousand pounds had to be paid for the privilege of writing M.P. after a bourgeois name. The House of Commons, as "the best club in London," afforded an opportunity for social advancement. Lord Chesterfield in his famous letters to his son (1767) expressed disgust that even noble lords were profiteering in the sale of their pocket boroughs. Still, some very able men got their start in politics by the favor of patrons—as they have done in America through the favor of bosses. William Pitt entered the House of Commons as member for a pocket borough; so did Charles James Fox.

It should not be imagined, of course, that the majority of the members in the House of Commons, prior to 1832, were chosen in this way. But the proportion was sufficiently large to give these patrons the balance of power. It enabled them to block every project for widening the suffrage or redistributing the seats. Moreover, in counties and boroughs where the electorate was too large to be controlled by a patron, there was a great deal of open bribery. Some wealthy outsider, seeking to capture the seat, would come in with his gold. The voters would hold off until they got their price. The polling extended over a week and in a close election the price went a little higher each day. In the last hours of the polling it sometimes rose to twenty or thirty pounds per vote. A "freeman of the town" who sold his vote at the top of the market had no need to work for a living during the rest of the year. "The House of Commons," said Pitt, "is not representative of the people of Great Britain; it is representative of nominal boroughs, of ruined and exterminated towns, of noble families, of wealthy individuals, and of foreign potentates." This, by the way, was the House of Commons which passed the Stamp Act, placed the taxes on tea, attempted to coerce the colonies, and provoked the American Revolution.

ELECTORAL CORRUPTION.

THE GREAT REFORM

The movement for a reform of the suffrage and for a redistribution of seats began as early as 1775, but for various reasons it made slow progress. The excesses of the French Revolution gave it a setback. Then, for a dozen years, Europe was convulsed by the great con-

[1] See also *below*, Chapter XX.

flict with Napoleon, and it was not until after the Corsican had been safely caged at St. Helena that the people of Great Britain could give due thought to their own domestic problems. The close of the Napoleonic War was immediately followed, moreover, by a wave of conservatism, a resurgence of autocracy such as invariably follows a great war. The ten years following 1815 were not favorable for the launching of political reforms. England was tired of Continental turmoils, anxious to live in tranquillity within her own sea-girt bounds, eager to build up her own industry, and disinclined to do anything rash. Reform had to await a change in the national temper.

THE MOVEMENT FOR REFORMING THE SUFFRAGE.

Great wars are followed by conservative reactions but they also create problems of economic and social reconstruction which cannot be solved by reactionaries. England after 1815 had become an industrialized country with millions of people huddled together in mushroom factory towns. Yet the authorities did not sense the fact that this redistribution of the people meant new needs, new problems, new laws, new politics. Hence there was no town planning, no provision for water supply or sanitation, no serious attempt to prevent overcrowding in the houses occupied by the workers. The hours of labor were long and the pay was low. Women and children in large numbers were required to work under conditions which menaced the future of the race. A few social and economic reformers cried out in protest against the existing conditions, but they were looked upon as wild asses of the desert. (Pioneers of great reforms usually are.) Nevertheless they kept on and soon aroused a far-reaching popular demand for laws in the interest of the factory worker, for a readjustment of the tax burdens which the war had imposed, and for an improvement in the conditions of urban life. To this clamor the unreformed House of Commons made no response, hence it gradually dawned upon the people that no program of social or economic betterment could be put into effect until parliament had itself been reconstructed. Political reform, in other words, must come first.

ITS CONNECTION WITH THE NEED FOR SOCIAL AND ECONOMIC REFORM.

Political reconstruction, however, was not an easy thing to achieve, for the obstacles were great. Peers and patrons were in the way. The inherent conservatism of the middle-class Englishman, his fondness for old traditions, his aversion to drastic changes—these were hard to overcome. The movement for political reform did not show much progress

THE FINAL VICTORY.

until 1832 when, by a fortunate combination of circumstances, a Whig ministry came into power. The next year it ventured to bring in a reform bill. The House of Commons passed it; the Lords threw it out; the Commons passed it again. A bitter conflict then ensued between the two chambers and the issue was for a time in doubt. In some countries such an impasse would have led to civil war. But ultimately the Lords gave way and the Great Reform Act of 1832 went on the statute book. A revolution in the spirit of English government was accomplished without firing a shot.

PROVISIONS OF THE GREAT REFORM ACT:

1. REDISTRIBUTION OF SEATS.

The Act of 1832 is perhaps the most important statute ever passed by the British parliament. First of all it dealt with the redistribution of seats. The act did not provide for a general redistricting, nor did it adjust representation to the number of voters in each district, but it cleared away the most glaring inequalities. The rotten boroughs and pocket boroughs were for the most part obliterated from the list of constituencies. Some of the smaller boroughs were consolidated while others had their representation reduced from two members to one. In this way nearly one hundred and fifty seats were gained for distribution among the more populous new towns and counties. The act gave at least one representative to every populous community.

2. WIDENING OF THE SUFFRAGE.

In the second place the Great Reform Act overhauled the suffrage requirements. Parliament might have taken this opportunity to make the suffrage uniform in both counties and boroughs, but did not do so. The old distinction between county and borough suffrage was retained. In the counties the franchise was extended to include not only the forty-shilling-freeholders but tenants of lands having certain higher rental values. In the towns a uniform suffrage was substituted for the old diversity of requirements, by enfranchising all "rate-paying occupants who were assessed on a rental value of ten pounds or more per annum," in other words any occupant of premises having an assessed rental value of a dollar a week or thereabouts. But it did not extend the suffrage to lodgers, or those who merely rented furnished rooms, hence it went considerably short of full manhood suffrage. Still it is estimated that the Act of 1832 added more than half a million voters to the lists, thus nearly doubling the total number.

LATER SUFFRAGE EXTENSIONS

While this measure quieted public clamor for the moment, it did not bring the reform movement to an end. The constituencies were still uneven; the secret ballot had not yet come into use; elections continued to extend over several days; and electoral corruption was still prevalent. Groups of militant reformers known as Chartists kept up a spectacular campaign for a new Magna Carta, a new charter of liberties which would guarantee manhood suffrage, equal constituencies, the secret ballot, annual elections, and other democratic reforms. Chartism did not succeed in its program, but the drift of public sentiment eventually became strong enough to compel a further widening of the suffrage. Strange to say, the Conservatives were the ones who fathered the Second Reform Act of 1867, a measure introduced by the Disraeli cabinet. This adroit Jewish premier stole from the Liberals their best political ammunition.

THE SECOND REFORM ACT, 1867.

The Act of 1867 provided for a further redistribution of seats by taking members from the smaller constituencies and giving them to the larger ones. It also extended the suffrage in both counties and boroughs, more particularly by including all "ten pound lodgers" in the borough lists.[1] Although this extension stopped short of manhood suffrage, it added almost a million voters to the electoral lists, or about twice as many as had been admitted by the Great Reform Act of thirty-five years before.

A FURTHER EXTENSION.

Much tinkering with the electoral laws took place during the next two decades, mostly in attempts to remedy specific defects in the electoral system. The secret ballot was brought into use (1872); the practice of keeping the polls open for a whole week was abolished and elections were confined in each constituency to a single day. Finally, a drastic law for the suppression of corrupt practices was enacted (1883). A further extension of the suffrage was granted in 1884 and a considerable redistribution of seats took place in 1885.

FROM 1867 TO 1885.

From this latter date to the close of the World War there were no considerable changes in the system of electing members to parliament. Voting continued to be related, in some way or other, to the ownership or occupancy of property. But this was not so undemocratic an arrangement as

FROM 1885 TO 1918.

[1] That is, lodgers paying at least ten pounds a year as rental for their lodgings.

it sounds, because owners, occupants, and lodgers constitute the great majority of the adult male population in any country. On the other hand the requirement that every voter should be an owner, a tenant, or a lodger, did disfranchise a good many farm laborers, domestic servants (coachmen, butlers, etc.), as well as sailors and other persons whose occupations required them to move about frequently from place to place. It is estimated that about two million names were kept off the lists in this way. Moreover none of these electoral reform acts gave the suffrage to women.

THE DEMAND FOR WOMAN SUFFRAGE.

There was a movement for woman suffrage in Great Britain before the outbreak of the World War, but it had made little headway. During the war, however, it gained strength by reason of the willingness with which thousands of British women went to work in munition factories, thus releasing large numbers of men for active military service. Public opinion swung over to the view that the women whose sacrifices helped to save England ought to be given a share in governing England. Yet it did not seem wise to precipitate a controversy over this issue while the war was raging. So the problem of settling the basis of a new electoral law which would grant equal suffrage and make various other changes without starting a controversy in parliament was referred to a large conference representing all the political parties and presided over by the speaker of the House of Commons. This conference agreed on a report, some provisions of which were in the way of compromises to secure unanimity. On the basis of this report a new electoral law was drafted.

THE ACT OF 1918.

ITS CHIEF PROVISIONS:

This statute, which passed parliament without difficulty, is known as the Representation of the People Act (1918).[1] The old distinction between county and borough constituencies was retained in this statute, but the suffrage qualifications were now (for the first time) made uniform in both. Hence the distinction between

[1] 8 George V, c. 64–65. A supplementary statute, known as the Representation of the People Act, No. 2 (10 & 11 George V, c. 35), was passed in 1920. It will be noted that the English practice is to designate acts of parliament by titles which give a clue to their contents. Thus, the Housing of the Working Classes Act, the Defence of the Realm Act, the Government of Ireland Act, the Government of India Act, and so on. To the student of political history this has an obvious advantage over the American plan of tagging measures with the names of congressmen. Such designations as the Sherman Act, the Volstead Act, the Harrison Act, the Mann Act, the Wagner Act, etc., convey no intimation as to what the law deals with.

county constituencies and borough constituencies is no longer of any practical importance. A borough member is one who represents a large town or city; a county member is one who represents a group of smaller towns, villages, and rural districts. But both are chosen at the same time, in the same way, and by the same suffrage. Each county and borough member represents approximately the same number of people. The present quota is about 75,000. In the United States the quota for each congressional district is about 275,000. Hence a congressman represents on the average nearly four times as many people as a member of parliament.

1. ABOLISHED THE OLD DISTINCTION BETWEEN COUNTY AND BOROUGH SUFFRAGE.

The main provisions of the Act of 1918, however, related to an enlargement of the voters' lists. The franchise was widened so that it now includes every male British subject twenty-one years of age and over, who has lived in any constituency or in an adjoining constituency for at least three months prior to the annual compilation of the voters' register. Or, if he occupies an office, shop, or any other business premises in the constituency, he may be enrolled as a voter though he is not an actual resident.[1] But the act put a limit on plural voting. Prior to 1918 a man who occupied property in several constituencies could vote in each of them, and as the elections were not held in all the constituencies on a single day he could travel around from one place to another in time to cast his ballot in each. Thus it sometimes happened that a man who had an office in London, a summer cottage in Brighton, a shooting lodge in Scotland, and a country house in Surrey could qualify as a voter on each of these premises and cast several ballots at a general election This is no longer possible. No one, under any circumstances, may now vote in more than two constituencies. If he be an *occupant* in one constituency and a *resident* in another, he may vote in both.[2]

2. GAVE VOTING RIGHTS TO ALL ADULT MALE CITIZENS.

In addition, all British subjects who hold degrees (except honorary degrees) from certain universities are entitled to cast their ballots for the election of those members of parliament who represent the

[1] The premises must have a rental value of at least ten pounds per annum, that is, a little more than four dollars per month.

[2] A *resident* is one who actually lives in a place; an *occupant* does not live on the premises—as in the case of an office or factory.

universities (see pp. 172–173), and may also vote in the constituencies where they reside; but in that case they may not also claim qualification as occupants of business property. Thus the principle of "one man, one vote," is not yet established in Great Britain although as a matter of fact the great majority of the electors have one vote only. The number of those who are entitled to a second vote under the existing laws is considerable, but it forms a very small fraction of the total electorate and many of those who possess the right do not exercise it.

3. UNIVERSITY REPRESENTATION.

The question of woman suffrage gave the parliamentary leaders a great deal of difficulty in 1918. Logic seemed to dictate that if women were admitted to the suffrage, they should be admitted on equal terms with men. But even logic has to reckon with the realities, and everyone knew that Great Britain had suffered a serious reduction in man-power by reason of the war. If the two sexes were placed on an equality, therefore, the women would considerably outnumber the men on the voting lists. Even those who favored woman suffrage were not sure that the creation of a preponderantly feminine electorate would be a wise action to take at a time when the nation was still in the throes of a struggle for existence (February, 1918) with the outcome of the war still in doubt.

4. GAVE VOTING RIGHTS TO WOMEN.

After much deliberation, therefore, a compromise between logic and the interests of British man-power was reached by the establishment of a twofold restriction on woman suffrage. First, it was provided that women should not be eligible to vote until the age of thirty, and second, that they must either be occupants of property or wives of occupants. The Act of 1918 further arranged that a woman over thirty years of age, if a business occupant in one constituency and residing in another, might vote in both, as in the case of male voters.

BUT WITH AN AGE DIFFERENTIAL.

The action of parliament in providing an age differential for the safeguarding of political masculinity was of course not altogether satisfying to the woman suffrage organizations of Great Britain. Hardly was the ink on the statute dry when they began their agitation for an amendment to this compromise provision. The old guard of anti-suffragists put up a hard fight against "votes for flappers" as they called it, but unavailingly, for in 1928 an equal franchise bill was brought in by a Conservative ministry and passed both Houses. The voting

THIS AGE LIMIT IS NOW REMOVED.

age for women was reduced to twenty-one and all other legal differentiation between male and female suffrage was swept away. Five million more names were thus put on the parliamentary voters' lists, bringing the total electorate up to about twenty-seven millions or more than half the entire population.

BRITISH AND AMERICAN SUFFRAGE RULES COMPARED.

In the United States the same suffrage requirements are established for national, state, and municipal elections; but in Great Britain this is not yet the case. The voters' lists used in parliamentary elections vary somewhat from those used in municipal elections. In national elections there is virtually universal suffrage, with the customary qualification of citizenship and residence; but in municipal elections the suffrage is still hitched up with ownership or occupancy. No one is eligible to vote at these elections unless he (or she) is an owner or occupant of some premises or the husband or wife of an owner or occupant. Hence it is that a man (or woman) may be a parliamentary voter but not a municipal voter, for the local suffrage is more restricted than the national.

DISQUALIFICATIONS.

There are certain disqualifications which render both men and women ineligible to be enrolled as voters at parliamentary elections. The list of disqualifications is sometimes facetiously stated to include "criminals, idiots, aliens, paupers, and peers." Criminals and idiots, while confined in public institutions, are not permitted to vote. Nor may anyone be enrolled unless he is a British subject by birth or naturalization. The term British subject, however, includes everyone who owes allegiance to the king and is not restricted to the inhabitants of the British Islands. It includes Canadians, Australians, South Africans, East Indians, as well as Englishmen, Irishmen, Scotsmen, and Welshmen. Members of the peerage are excluded from voting at parliamentary elections because they are adequately represented in the House of Lords; but in municipal elections this exclusion does not apply. The right to vote at all elections, both parliamentary and municipal, was formerly withheld from paupers, that is, from those who are supported by the public poor relief funds; this disqualification was abolished by the Act of 1918; but paupers who are maintained in public institutions do not get their names on the voters' list because they are not deemed to have satisfied the residence requirement. Voters may also be disfranchised by the courts on conviction for certain corrupt practices at elections.

Thus, by successive steps, the British suffrage has been widened and made democratic over a period of one hundred years. In 1831 the parliamentary voters of Great Britain numbered less than one-twenty-fourth of the population; from 1832 to 1867 the proportion was about one sixteenth. From 1867 to 1885 it stood at one twelfth, but from the latter year to 1918 it went up to one seventh. The Act of 1918, by admitting a large number of women voters, raised the proportion to one third, and the Equal Franchise Act of 1928 hoisted it to more than one half. Thus the British electorate has moved from four per cent to fifty-five per cent of the population in the course of a hundred years. This of itself will give one some idea of what has been termed "the irresistible march of democracy."

THE MARCH OF DEMOCRACY.

THE PRE-REFORM SUFFRAGE. The best history of the English parliamentary suffrage prior to 1832 is that given in the two volumes on *The Unreformed House of Commons: Parliamentary Representation before 1832* by Edward and Annie G. Porritt (2nd edition, 2 vols., Cambridge, 1909). A later work in the same field is L. B. Namier, *The Structure of Politics at the Accession of George III* (2 vols., London, 1929). J. Holland Rose, *The Rise and Growth of Democracy in Great Britain* (London, 1897) gives a comprehensive account in briefer form. The story of the "rotten boroughs" may be found in Charles Seymour and Donald P. Frary, *How the World Votes* (2 vols., Springfield, Mass., 1918), Vol. I, chaps. iv–v. Mention should also be made of G. S. Veitch, *The Genesis of Parliamentary Reform* (London, 1913), G. M. Trevelyan, *Earl Grey and the Reform Bill* (London, 1920), P. A. Gibbons, *Ideas of Political Representation in Parliament, 1651–1832* (Oxford, 1914), and J. R. M. Butler, *The Passing of the Great Reform Bill* (New York, 1914).

SINCE THE ACT OF 1832. The later extensions of the suffrage are discussed by O. F Christie, *The Transition from Aristocracy, 1832–1867* (London, 1927), Homersham Cox, *Reform Bills in 1866 and 1867* (London, 1868), J. H. Park, *The English Reform Bill of 1867* (New York, 1920), Charles Seymour, *Electoral Reform in England and Wales, 1832–1885* (New Haven, 1915), and Sir Hugh Fraser, *Representation of the People Acts, 1918–1921* (London, 1922). The pre-war period is covered in H. L. Morris, *Parliamentary Franchise Reform in England from 1885 to 1918* (New York, 1921).

A full discussion of the Act of 1918 may be found in G. P. W. Terry, *The Representation of the People Act, 1918* (London, 1919), W. H. Dickinson, *The Reform Act of 1918* (London, 1918), A. O. Hobbs and F. J. Ogden, *The Representation of the People Act* (London, 1918), and J. L. Seager, *Parliamentary Elections under the Reform Act of 1918* (London, 1921).

WOMAN SUFFRAGE IN GREAT BRITAIN. The winning of woman suffrage in England is discussed in W. L. Blease, *The Emancipation of English Women* (London, 1913), Emmeline Pankhurst, *My Own Story* (New York, 1914), M. G. Fawcett, *The Women's Victory—and After* (London, 1920), and R. Strachey, *The Cause; A Short History of the Women's Movement in Great Britain* (London, 1928).

CHAPTER X

THE HOUSE OF COMMONS: NOMINATIONS AND ELECTIONS

Representative institutions will probably perish by ceasing to be representative. . . . A tendency to democracy does not mean a tendency to parliamentary government or even toward greater liberty.—*W. E. H. Lecky.*

Members of the House of Commons are the only persons connected with the central government of Great Britain who are chosen by popular vote. All others owe their positions to inheritance or appointment. The country is divided into parliamentary districts or constituencies, and for the most part each constituency elects one member. There are, however, some two-member constituencies. The present House of Commons contains 615 members, distributed as follows: England, 492; Wales, 36; Scotland, 74; Northern Ireland, 13. Each member of the British House of Commons (with the exception of the university members) represents on the average about 75,000 people. According to the Constitution of the United States there must be a redistricting after each decennial census; in Great Britain there is no such requirement either by law or by custom. Parliament rearranges the constituencies at irregular intervals; the last general redistricting was in 1918, while the one before that was in 1885. Thus there has been only one reapportionment in more than fifty years.

THE ORDINARY CONSTITUENCIES.

It is of interest to note the way in which this redistricting is done. In 1918 the first step was to appoint a Redistribution Commission composed of persons in whose integrity and independence the House of Commons had confidence. This commission was directed to prepare a plan for the redistribution of seats, but the principles which they were to follow were laid down by the House in resolutions which had been agreed upon by all parties. The commission held local inquiries all over the country and thereafter drafted recommendations which were finally embodied in a bill, placed before parliament, and passed with no substantial changes.

HOW THEY ARE MAPPED OUT.

This procedure might seem to give opportunity for gerrymandering, but English political traditions are strongly against anything of the kind and there has been virtually none of it. All the constituencies, so far as is practicable, follow historical boundaries; they include a single town, or two contiguous boroughs, or a part of a large city, or what is left of a county after the towns have been taken out. They are never constructed by piecing together parts of different boroughs or different counties. When a county or a borough is parcelled into two or more constituencies these are known by names, not by numbers as in the United States. Thus a member of parliament represents the West Derby division of Liverpool, or the Darwen division of Lancashire, whereas a member of Congress sits for the tenth Massachusetts district, or the eighth Illinois congressional district.

NO GERRYMANDERING.

Not all the seats in the House of Commons, however, are allotted to boroughs and counties. The older British universities have for many years been entitled to representation in the House of Commons, and fifteen seats were allotted to all the universities by the Act of 1918. This represented a slight increase over their previous quota. By the withdrawal of the Irish Free State the number of university members has been reduced to twelve. Two members are allotted to Oxford and two to Cambridge, one to the University of London, three to the four Scottish universities (Edinburgh, Glasgow, Aberdeen, and St. Andrews), one to the University of Wales, two to the English provincial universities (Manchester, Birmingham, Durham, etc.), and one to Queen's College, Belfast. The voters' lists in these university constituencies include all British subjects who hold degrees (other than honorary degrees), or have fulfilled the stated requirements for a degree.

THE UNIVERSITY CONSTITUENCIES.

The list of university voters is prepared by the governing body of the university from its lists of graduates, leaving out those who are not British subjects When a university constituency is entitled to several members, as in the case of the Scottish universities, the election is determined according to the principles of proportional representation, thus giving the minority a chance to be represented. It is not necessary that graduates shall come to the university on election day and vote in person. They are allowed to send their ballots by mail to the polling officer.

HOW UNIVERSITY MEMBERS ARE ELECTED.

The practice of according representation to the universities has existed in Great Britain since the reign of James I. Its origin was connected with the king's attempt to control the Commons, but the universities soon ceased to elect the royal nominees and sent men of sterling independence to parliament. University representation thus became a fixture. Although it involves a departure from certain fundamental principles in parliamentary representation and offends the dogma of electoral equality, there has been no serious popular outcry against it, and in 1918 the number of university members was somewhat increased.[1] The fact that it involves a political discrimination in favor of the educated classes does not seem to rankle in the British mind. The universities, as a rule, choose men of ability and of liberal views. With one or two exceptions they are far from being strongholds of Toryism. Even the Labor party has a large number of university graduates in its ranks and among its leaders.

A COMMENT ON THE SYSTEM.

In Great Britain a general election must nominally be held at least once in every five years, but parliament is supreme in its power to prolong its own life when it decides to do so.[2] It did so during the war years 1914-1918, thereby affording a fine illustration of the way in which the British constitution can be adapted to the needs of the hour. The Congress of the United States, no matter what the emergency, cannot prolong its own life for a single day. Whether in war or peace, there must be a congressional election every second year. British elections do in fact come oftener than once in five years; sometimes two have taken place in one year, as in 1910, or three in successive years, as in 1922–1924. This is because the prime minister can at any time advise the crown to dissolve parliament and issue writs for a general election. Occasionally his hand may be forced by the opposition in parliament, but more often he either lets parliament run its term, or, with an eye on the drift of public sentiment, decides to advise a dissolution and a general election when the chances of victory look promising somewhere near the end of its term.

THE DURATION OF A PARLIAMENT.

Naturally the members of the House do not like the idea of a

[1] A franchise bill which was brought in by the Asquith ministry in 1912, but later withdrawn, contained a provision abolishing university representation. This proposal evoked a great deal of opposition, even from unexpected quarters.

[2] But it should be noted that a measure to prolong the life of a parliament is outside the scope of the Parliament Act, and hence cannot in any circumstances be passed without the assent of the Lords.

new election until their full five-year term expires, for an election campaign means expense to them and the risk of defeat also. But the prime minister is the generalissimo, and it is he who decides, with the help of his cabinet, whether good strategy dictates an appeal to the country. Having made up their minds, however, the ministers can keep the decision secret until their own campaign plans are in readiness. On a few occasions they have been able to "spring an election" upon their opponents, catching the latter unawares. But the opposition has learned that it pays to be vigilant and nowadays it is seldom caught napping Still the privilege of choosing the time for an appeal to the country gives the ministerial forces a distinct advantage.

THE UNCERTAINTY.

So nobody can predict just when the next British election will come. But whenever a parliament has been in existence for two or three years the political pot begins to simmer. A rumor that parliament is going to be dissolved always finds some believers until it is officially denied. Presently the newspapers begin to announce "from an authoritative source," or "on trustworthy information," that a dissolution of parliament is being considered by the ministry. In the end, after various false alarms, an official announcement settles the matter by giving the exact dates for the nomination and the polling. The interval between this announcement and the date for the nominations is usually brief, sometimes only two or three weeks. That being the case, the political parties do not delay the selection of their candidates until the date of the election is known. They have them in readiness long before the announcement comes.

FIXING THE ELECTION DATE.

NOMINATIONS

The methods by which the parties choose their candidates are not alike in all the constituencies, and in any event these methods can be best explained in connection with a survey of party organization and activities a little later. But the official nomination procedure is very simple. All that a candidate need do, in order to get his name on the ballot, is to file a nomination paper signed by ten qualified voters of the constituency. This document he hands to the "returning officer" on the day designated for the making of nominations. The returning officers are named ex officio; in a borough the mayor always serves, and in a county the sheriff. When a constituency spreads over more

HOW NOMINATIONS ARE MADE.

than one borough or county the home secretary designates which mayor or sheriff is to act. In the university constituencies the vice chancellor or some similar academic official does duty as the returning officer.

THE PAPERS AND THE DEPOSIT.

On the day set for making nominations the returning officer attends at the town hall or court house or other convenient place and the nomination papers are handed to him by the candidates or their agents. One hour is allowed for this purpose; then the nominations are closed. Although only ten names are required on nomination papers it is customary for the candidates to gather a much larger number, sometimes several hundred. This is done by way of advertising the candidate's popularity. With his nomination paper each candidate must also place in the hands of the returning officer a deposit of one hundred and fifty pounds sterling. This requirement of a deposit is intended to discourage frivolous or hopeless candidacies.[1] If the candidate receives more than one eighth of the total vote on election day his deposit is returned to him; otherwise it is forfeited and turned into the national treasury. Some deposits are forfeited at every election.

SIMPLICITY OF THE PLAN.

Apart from this requirement the most distinctive feature of the British nomination system is its simplicity. There are no primaries as in the United States. So far as the official requirements are concerned, anybody can have his name submitted to the voters if he is willing to risk a few hundred dollars. Getting ten signatures is no trick in a constituency of thirty or forty thousand voters. But the deposit is another matter and serves as a deterrent to those who merely desire to gratify their personal vanity by getting their names on the ballot. No candidate, moreover, may announce himself as the representative of a political party unless he has been formally "accepted" or endorsed by the regular party officials. And without a party endorsement his chances of election are next to nil. At any rate it is only on rare occasions that more than three candidates appear in any single-member constituency, and until the rise of the Labor party there were usually not more than two. Sometimes only one candidate is nominated and when the time for filing papers has expired he is declared elected unopposed, or, as the English say, "by acclamation."

For many centuries no one could be nominated for election to

[1] A similar requirement exists in Japan. See Chapter XLIII.

the House of Commons unless he possessed a property qualification. This requirement is now abolished. Any British subject who is qualified to be a voter may stand for election in any constituency. Women are eligible.

QUALIFICATIONS OF CANDIDATES.

NON-RESIDENT CANDIDATES.

It is not necessary, either by law or by usage, that he be a resident of the constituency which he seeks to represent. Non-resident candidacies are common, although perhaps not so common as they used to be. In Great Britain, as in every other country, the voter naturally prefers one of his own neighbors to a stranger, provided other things are equal or nearly so. But British voters are much more ready than those of other countries to sink this preference if the outsider is a man of distinctly superior qualifications. In every House of Commons there are members, sometimes a good many of them, who sit for constituencies in which they do not reside and never have resided. Mr. Gladstone, in his long term of service, sat for five constituencies, one after another, and did not live in any of them. There is a great advantage in this absence of a residential requirement, for it enlarges the field of selection, gives a good man more than a single chance, and thus helps to maintain high standards of candidacy.

ELECTIONS

The polling takes place on the same day throughout Great Britain except in the university constituencies. Nominations are made on the eighth day after the date of the royal proclamation summoning a new parliament; the polling is held on the ninth day after the nomination. Prior to 1918 the returning officer in each constituency was given a certain amount of leeway in fixing the election date, with the result that the polling did not take place everywhere on the same day. Certain counties and boroughs would vote on Monday, others on Tuesday, some more on Wednesday, and so on for a whole week or longer. Clerks and counters moved from one constituency to another, being hired by the returning officers. As they were experts, the polling-machinery ran smoothly and errors in counting the votes were rarely found.

THE POLLING DAY.

On the other hand this habit of stringing the elections over a week or two had some objectionable features. It prolonged the tension and excitement of a general election. It gave the constituencies which voted last an advantage over those which voted first.

They could see how the election was going and swing to the winning side, which not infrequently they did. When half the constituencies had voted the result was usually predictable. This took most of the excitement out of the election long before it was finished. So the Act of 1918 provided for a one-day general election as in the United States. In all the constituencies the polling now occupies the hours from eight in the morning till eight at night, but the polls may be opened at seven and kept open until nine, if the candidates so request, and occasionally this is done in thickly populated constituencies. There is no such general uniformity of polling hours in American congressional elections. Each state, and sometimes each city, fixes its own hours for opening and closing the polls.

HOW THE LIST OF VOTERS IS COMPILED.

The register of voters in each constituency is made up and revised once a year without any reference to whether an election is impending. Thus the list is always in readiness. The function of preparing it belongs to the registration officer in each constituency. He is usually the town clerk of a borough, or the clerk of the county council, as the case may be. Prior to 1918, when the suffrage was tied up with the ownership or occupancy of property, it was the practice to compile the voters' list from the assessment rolls. But since the establishment of universal suffrage it has become necessary to secure the names by resort to something like census-taking methods. The compilation is not made, as in most American states, by requiring the voters to come to a certain place and be registered. The British registration officer appoints canvassers who go about from house to house collecting the names of all those who are qualified to vote. These canvassers, early in July of each year, make their rounds with a copy of the last previous list, finding out at each house what changes have taken place during the preceding year. When they present their reports to the registration officer, the latter makes up a provisional list which is then posted in various public places—at the town hall, the post office, sometimes even in the vestibules of the churches—with an announcement that all claims and objections must be made within a certain interval.

REVISING THE LIST.

Anyone who finds that his name is not on this provisional register may apply to the registration officer to have it put on, and anyone can object to the inclusion of a name already there. The registration officer, after hearing such claims and objections, makes known his decision in each case, but this decision may be appealed to the courts. After an interval

has been allowed for the making of such appeals the register is closed and thereafter no changes can be made in it until the next revision. Attached to the regular list is a supplementary register of absent voters. This includes the names of persons who, by reason of their being in the military or naval service, or for some other good reason, are likely to be absent from the constituency when an election is held and hence have asked to be put on the special register.

In Great Britain the register of voters, when finally closed, is deemed to be infallible. Under no circumstances may anyone vote unless his name is on it. The Act of 1918 is explicit on this point and permits no exceptions. It matters not that a name was left off inadvertently and through no fault of the voter. No officer or court has authority to make changes in the final register. No one may "swear in" his vote at the polls, as is sometimes permitted in the United States. And, conversely, if the name of any person is erroneously placed on the list he is customarily allowed to vote even though he is obviously ineligible. There is some question, nevertheless, as to whether the inclusion of a name on the register is absolutely conclusive evidence that the owner of the name has a right to vote. For although the Act of 1918 explicitly provides that anyone whose name is on the register shall be entitled to vote, it adds the qualifying proviso that this shall not "confer a right to vote on any person who is subject to any legal incapacity to vote." It would seem, therefore, that a person who is under age, for example, need not be permitted to vote if his name should happen to get on the list in error.

THE LIST, WHEN REVISED IS HELD INFALLIBLE.

The ballot used in parliamentary elections is short, simple, and bears no party designation. It contains merely the name, address, and vocation of each candidate. The names are set down in alphabetical order and each name is followed by a blank space in which to mark a cross. The ballot is hardly larger than an ordinary envelope. Ballots are arranged in pads like counter-checks on a bank counter, and attached to each ballot by a perforated line is a numbered stub or counterfoil. The purpose of this counterfoil is to enable the poll clerks to keep track of the ballots. These counterfoils are torn off before the ballots are placed in the box and are kept to check up with the total number of votes cast. The ballots are printed at the public expense under the supervision of the returning officer and are furnished by him to

THE BALLOT.

each polling place. The returning officer also designates the polling places and assigns to each poll a deputy returning officer or presiding officer of the poll, together with a poll clerk for every five hundred registered voters. Each candidate is also allowed to have an agent inside the polling room.

POLLING PLACES.

The polling places are usually located in public buildings,—at the town hall, a school, or a courthouse—but it is often necessary to hire space in private buildings as well. Within the polling room are screened compartments in which the voter marks his ballot. Then he drops the ballot into the box and walks out with a feeling that he has done his duty as a freeborn Briton. The ballot box is merely a covered steel box with a slot in the lid. It is not a complicated churn-like contrivance with a handle for inserting the ballots, such as is used at American elections. And voting machines, built like giant cash registers, are not yet used in Great Britain. When the poll is closed the ballot box is sealed and sent to the town hall or other headquarters where the counting is to take place.

CHALLENGING VOTERS.

The presiding officer of the poll, the poll clerks, and the agents of the candidates are all sworn to secrecy. The only function of the agents is to check off the names of those who vote and guard against the personation of voters. They have a right to challenge any voter on the ground that he is not the person whose name is on the list, but not on any other ground. Challenges are decided by the presiding officer of the poll and there is no appeal from his decision. Ordinarily if the voter makes a sworn statement that he is the person whose name appears on the list the presiding officer will accept this statement. Challenges are less numerous than at American elections.

ABSENT VOTING.

Absent voting has been permitted in parliamentary elections since 1918. Persons who are on the absent voters' list or are unavoidably absent from the constituencies in which they are enrolled as voters may appoint proxies to vote for them. These proxy papers are filed with the returning officer. No person except a near relative or someone who is himself a voter in the constituency may serve as a proxy. Instead of appointing a proxy to vote for him, however, the absent voter may obtain a ballot in advance of the election and send it to the returning officer by mail, but this alternative is not open to him unless he mails the ballot from somewhere within the kingdom. A voter who

is absent at sea or outside Great Britain must use the proxy method in order to have his vote counted.[1]

When the poll is closed, and the ballot boxes brought to a central place, the counting is done by the returning officer and his assistants.

COUNTING THE VOTES.

The procedure of counting the ballots is quite different from that followed in the United States where the work is done at each polling booth. In Great Britain the first step is to verify the number of ballots in each box with the total as shown by the poll records. Then all the ballots from the various polling places are mixed together. This is done in order that no one may know how the vote stood at any particular polling place. Only the totals for the whole constituency are announced; hence no candidate can ever tell from the official count whether he ran strong in one section and weak in another.

NO POST-MORTEMS.

This will sound strange to the ears of any American politician. Every candidate for Congress insists on knowing the result in each precinct, and those who are defeated sometimes spend a good deal of time in a post-mortem analysis of the figures. But at a British election, after the thousands of ballots have been shuffled beyond any such possibility, they are divided into bundles according to the candidates for whom they have been marked, and the ballots in each bundle are then counted. Spoiled ballots are taken out and put in a special envelope. In spite of this centralized counting a large proportion of the results are announced before midnight on the day of the election. Within a certain space of time any candidate can demand and obtain a recount.

THE MOVEMENT FOR PROPORTIONAL REPRESENTATION.

The parliamentary conference which prepared the plan for the Act of 1918 recommended that proportional representation should be established in all constituencies which elected more than one member. This idea met with great favor in the House of Lords, but was rejected by the Commons. It may seem surprising that the House of Lords, which is traditionally a conservative body and indisposed to any changes in political methods, should have been so eager for the introduction of the proportional plan. The reason, of course, is that the Lords were shrewd enough to realize that the rise of the Labor party might soon place the other political

[1] A proxy paper, unless cancelled in writing, remains effective so long as the maker's name continues on the absent voters' list.

parties in a minority. This is not to imply that the Lords are more sagacious than the Commons, but their own vicissitudes (as a House) have perhaps imbued them with a greater respect for the rights of minorities—at least in the abstract.[1]

At any rate the issue dropped into the background until 1924 when a Labor ministry was in office and dependent on the support of the Liberals for keeping itself there. The Labor party had been agitating for proportional representation but when the issue now came before parliament the Labor ministry decided not to draw party lines and risk its hold on office. Instead it gave the Labor members permission to vote against the plan—which many of them did—and it was defeated. But the issue is not yet a dead one. It has occupied a prominent place in English public discussion since 1924 and will probably engage the attention of parliament before long again.

English parliamentary elections are conducted in a dignified and orderly way, with very little hubbub and virtually no corruption. It was not so in the old days. Some of Hogarth's drawings give us an idea of what an English election was like in the middle of the eighteenth century. Hired bullies went about intimidating voters. Day after day, while the voting continued, new hogsheads of beer were tapped at the expense of the candidates. Fights between the supporters of each party were of nightly occurrence and no Marquis of Queensberry rules applied. Heads were broken and eyes blackened in the name of patriotism. An election in those days turned bedlam loose in the town. Then, when the last vote had been polled and counted, the successful candidate was "chaired" by his friends—carried unsteadily above the heads of the crowd with a motley procession of inebriates following him. It took England some time to recover from the headache of a general election in the days of the Georges.

ELECTION CAMPAIGNS:

1. IN THE OLD DAYS.

CAMPAIGN METHODS

But now all this is changed, and something ought to be said about contemporary British campaigning, for the methods differ a good deal from those used in American congressional elections. In every British constituency there is, as will be explained later, a local association and

2. AT THE PRESENT TIME.

[1] Proportional representation is used in some of the university constituencies.

committee for each party. Each party also has its national or central committee. The local associations are responsible for choosing their respective candidates, but if no good local candidate is available, or if sufficient funds cannot be raised in the constituency, the central committee is usually asked to help. It responds by "recommending" some non-resident candidate who is able to pay his own election expenses or for whom the national organization is willing to put up the funds. In the latter case, if the recommended candidate is "adopted" the central committee exercises a considerable influence upon the local campaign. Even among local aspirants for the party nomination the influence of the central committee is often a matter of consequence, the measure of its influence being the extent to which the local campaign has to be financed from central headquarters. One of the best ways for an aspiring young man to get into the House of Commons is to do effective organizing work at the national party headquarters and eventually get recommended to some constituency which is shy of good parliamentary timber. Some outstanding English political leaders have made their start in that way.

THE CHOICE OF CANDIDATES.

In any case, it is desirable that the candidates be placed in the field early, for no man knoweth the day or the hour when an election may come. Such matters are not regulated by the calendar but are in the lap of the gods—and the prime minister. It is also desirable that the candidates should begin their campaigns early by speaking at gatherings whenever invited, and by taking every means to broaden their range of acquaintance in the constituency. So they appear at public functions of every sort, take an active hand in every good cause, and put their names on each subscription list that comes around. In other words they submit to a good deal of polite blackmailing and try to do it with smiles on their faces. All this is colloquially known as "nursing a constituency," and the zeal with which some of the Labor candidates have outnursed their rivals is highly instructive.

THE ELECTIONEERING BEGINS EARLY.

Usage demands that a candidate shall be open-handed, if he can afford it, and that he shall keep on nursing his constituency after he has been elected. Does the parish church need a new bell? Or is the local boy scout troop raising a fund for a trip to London? Has the village cricket club a small deficit to be paid off, or is someone needed to

"NURSING" A CONSTITUENCY.

provide a prize for the game on a national bank holiday? Candidates and members are panhandled for all such things without compunction. Individuals, as well as organizations, come forward with their palms turned up. There are legal limits to what a candidate may spend for election expenses; but there are no limits on his contributions to charity or to any public cause when an election campaign is not in progress.

Nursing a constituency is not merely a matter of spending money. It involves time and patience also. The candidate must be in evidence at church fairs and parish picnics. He must show himself, betimes, at Rotary Club luncheons -- for these institutions have now invaded England. He must greet all and sundry with a cordial handshake, call them by name and show an interest in their personal affairs.[1] In the campaign he must address rallies, submit to heckling, and canvass voters to some extent. It is no longer possible for the candidate to make a personal call on all the voters in his constituency. He must get his friends and supporters to do most of it for him. Yet Gladstone once called at 2,000 houses in the constituency of Newark, pulling the doorbells and asking for votes. He liked it, so he said,--and won the election.

HOW IT IS DONE.

But no amount of nursing will ensure a candidate's election if the tide is swinging strongly against him. In most cases he will come through or fall with his party in the nation as a whole. Local conditions do not usually determine the result in individual constituencies. "The successful candidate is almost invariably returned to parliament not because of his personality nor because of his judgment and capacity, but because of his party label. . . . His own electioneering is far less important than the impression which his party creates in the minds of the electors."[2]

As soon as the date of a general election is announced, each candidate issues an address or manifesto to the voters of the constituency and broadcasts it through the mails. In this circular he always emphasizes his party allegiance or his independent views. The laws permit each candidate to send one circular free of postage. Meetings are then arranged, usually in halls, but also on the street corners as is the

MANIFESTOES AND MEETINGS.

[1] For an intimate account see Frank Gray, *The Confessions of a Candidate* (London, 1925).

[2] W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936), p. 362.

fashion in American cities. At these meetings, even before the candidate has had his say, the members of the audience are permitted to ask questions. The privilege is mainly utilized by voters whose attitude is hostile—hecklers, they are called, because their aim is to heckle the candidate into saying something that can be used against him.

HECKLING.

Heckling usually leads to a rapid fire of repartee between the floor and the platform while the audience displays its leanings by the relative amount of applause which it bestows upon the candidate and his hecklers respectively. Only a quick-witted candidate with a ready tongue can come through this sort of campaigning with success. Even when the candidate is a woman, the heckling goes on. It adds zest and humor to the rallies. Lady Astor, at one of her rallies, was queried by a half drunken fellow from the back of the hall: "Lady Astor, don't you sometimes wish you were a man?" "Of course I do," she replied, "don't you?" The saving grace of it is the tradition of giving everybody, candidates and hecklers, a square deal. Heckling is an institution which would not be tolerable but for the British tradition of fair play. Although it seriously detracts from the decorum of an election campaign and contributes very little to the elucidation of the issues, the voters like it and would strenuously object to its discontinuance. Hence there is much complaint that the use of the radio by candidates is going to take most of the hilarity out of English election campaigns. You can turn off the radio but you can't heckle it.

POLITICAL ADVERTISING IN BRITISH CAMPAIGNS.

To some extent the candidates appeal to the voters through newspaper advertisements and by posters on the billboards. Not so much literature is sent to voters through the mails as in America. Most candidates employ "sandwich-men" who walk up and down the principal streets with placards tied to them fore and aft. On them are printed the party slogans and various catch-phrases importuning the people to mark their ballots for somebody "and Liberty," or for somebody else "and Cheap Bread," or whatever slogan seems to fit the time and place. Cartoon posters play a prominent part in English campaigns and some of them are very forceful in the impressions which they manage to stamp on the public imagination. In the art of political cartooning England is far ahead of other countries. The billboards, during an election campaign, afford material for some interesting studies in the psychology of propaganda.

The most striking difference between British and American campaign methods is to be found in the vastly greater emphasis which British politicians place upon the personal solicitation of votes. There was a time when candidates for Congress were in the habit of "heeling" their districts, going from door to door in quest of support, but the number of voters in a congressional district is now too great for this procedure. A certain amount of personal canvassing is still carried on in the United States by each candidate's helpers, but this is not his main reliance for success at the polls. In England the personal canvass is reduced to a science. Each political party opens committee rooms in all parts of the constituency and at these rooms the names of all the voters in the neighborhood are arranged by streets. Friends and supporters of the candidate are then given blocks of names to be canvassed. Each name is written on a separate card with a blank space left for the canvasser's report. The cards, after the voters have been visited, are brought back to the committee room marked For, Against, or Doubtful. All the doubtful voters are than made the target of whatever influence or persuasion can be brought to bear. Attempts are also made to secure converts from among those who have been reported hostile. Nobody is overlooked in a well-organized campaign.

PERSONAL CANVASSING.

Every English voter expects to be canvassed on behalf of all the candidates, and feels himself slighted if he is not. The candidates and party committees, by the way, are not allowed to hire canvassers; the laws forbid this, and the whole thing has to be done by volunteers. This means, of course, that some of it is well done and some of it very poorly. The difficulty of conducting these personal canvasses has been much increased, of course, by the large expansion in the electorate due to the enfranchisement of women.

Less money, on the whole, is spent in English than in American political campaigns. This is partly because money for campaign funds is not so easily raised in Great Britain as in the United States, and partly because an American congressional district contains so many more voters than a British constituency. Many years ago parliament passed a statute known as the Corrupt and Illegal Practices Act which aimed to eliminate electoral frauds and set a maximum limit upon campaign expenditures. This statute, and amending acts, makes a distinction between *corrupt* practices and *illegal* practices. Corrupt

THE COST OF GETTING ELECTED.

practices include bribery, intimidation, personation, falsifying the count—things which involve moral turpitude. Illegal practices include doings which are not wrong in themselves but which tend to make an election undignified, unduly expensive to the candidates, or in some other way objectionable. Hence the illegalities comprise the hiring of canvassers, or bands, or too many committee rooms, or paying for conveyances on election day.

LIMITS ON CAMPAIGN EXPENDITURES.

The laws also set a limit on legal campaign expenditures. This limit is now fixed at six pence per voter in rural constituencies and five pence per voter in urban ones—the differential being based on the idea that a rural voter is harder to reach. In a city of 40,000 voters this allows a maximum of about $4,000. All campaign expenditures must be made through an authorized agent of the candidate, whose appointment is certified to the returning officer of the constituency. After the election this agent makes a sworn statement of all his disbursements, including the personal expenses of his candidate. This last-named item is important because such expenses are not usually required to be reported after American elections. At American congressional elections the maximum is $5,000, but the number of voters is several times larger than in a British constituency.

ELECTION PROTESTS.

A defeated candidate for the House of Commons may petition to have an election invalidated by alleging corrupt or illegal practices on the part of the victor or his agents. Such petitions are not heard, as in America, by the legislature itself; they are tried by the courts. When an election protest is filed in Great Britain the issue is referred to the King's Bench Division of the High Court, where two judges are assigned to hear all the evidence without a jury. The court then certifies to the speaker of the House of Commons its report confirming or unseating the member-elect. It is not the practice of the judges to void an election because of merely technical violations. They require evidence that there has been corruption or illegality on a scale sufficient to have influenced the result. Hence the voiding of an election is a relatively uncommon occurrence. If the matter in dispute relates to the legal qualifications of the elected candidate, and not to the manner of his election, it is investigated by the House itself and is not referred to the judges of the High Court for a recommendation.

As a rule the members of parliament are brought together at the earliest possible moment after a general election. This is in accord with the spirit of the British political system which demands that members of the ministry, who constitute the administrative branch of the government, shall continuously possess the confidence and support of a majority in the House of Commons. And the only sure way to determine whether the ministry possesses this support is to call the House into session. So long as a ministry continues in power after a general election without summoning parliament it is technically administering the affairs of the country without a mandate from the people.

NEWLY ELECTED MEMBERS TAKE THEIR SEATS AT ONCE.

HISTORY. The history of British electoral methods is covered in Edward and Annie G. Porritt, *The Unreformed House of Commons* (2nd edition, 2 vols., Cambridge, 1909), and in Charles Seymour, *Electoral Reform in England and Wales, 1832–1885* (New Haven, 1915). *Rogers on Elections* (16th edition, 3 vols., edited by William Powell, London, 1897) is the standard English treatise on election law; but a more up-to-date volume is W. E. Eyles, *Parliamentary and Local Elections* (London, 1936).

ELECTION PROCEDURE AND CAMPAIGNS. Present-day election procedure is described in Michael MacDonagh, *The Pageant of Parliament* (2 vols., New York, 1921), Vol. I, pp. 11–65, and in J. L. Seager, *Parliamentary Elections under the Reform Act of 1918* (London, 1921). Frank Gray, *The Confessions of a Candidate* (London, 1925) is an informing and amusing little volume. Attention should also be called to P. G. Cambray, *The Game of Politics* (London, 1932), John M. Gaus, *Great Britain: A Study in Civic Loyalty* (Chicago, 1929), Lord Beaverbrook, *Politicians and the Press* (London, 1925), J. K. Pollock, *Money and Politics Abroad* (New York, 1932), and the chapter on "Public Opinion and the Parties" in Herman Finer's *Theory and Practice of Modern Government* (2 vols., New York, 1932), Vol. I, pp. 444–480, which gives a graphic account of campaign methods.

PROPORTIONAL REPRESENTATION. On the proportional representation issue reference may be made to J. H. Humphreys, *Practical Aspects of Electoral Reform* (London, 1922), J. F. Williams, *The Reform of Political Representation* (London, 1918), G. Horwill, *Proportional Representation: its Dangers and Defects* (London, 1925), and C. G. Hoag and G. H. Hallett, Jr., *Proportional Representation* (New York, 1926), also the smaller volume by the same authors on *Proportional Representation—The Key to Democracy*, published by the National Home Library Foundation (Washington, 1937).

CHAPTER XI

THE HOUSE OF COMMONS: ITS ORGANIZATION

With all humble and due respect to Your Majesty . . . our privileges and liberties are our right and due inheritance no less than our lands and goods, . . they cannot be withheld from us, denied or impaired, but with apparent wrong to the whole state of the realm.—*The Commons' Apology of 1604.*

"Six hundred talking asses, set to make laws, and to administer the concerns of the greatest empire the world has ever seen." In one of his irritable moments (which came all too frequently) Thomas Carlyle thus epitomized the most powerful and the most interesting of imperial legislatures.

A HOUSE WITH A HISTORY.

As a representative lawmaking body the British House of Commons has no rival in age, for nearly six centuries have run their course since "the faithful Commons" began to function as a separate chamber. But it is not age alone that gives the House of Commons its high place among the lawmaking bodies of the present day. It is a legislature with virtually unlimited authority. Its powers are unique in their range and in the absence of constitutional restraint. Parliament and the House of Commons are to all intents one and the same thing. The House has supremacy in lawmaking; it controls the finances of the realm, fixes the jurisdiction of the courts, and dominates the action of the crown. The procedure of this House, moreover, is far more picturesque than that of any other representative chamber. It used to be said that the House of Commons was the best club in London and certainly there is no other legislative body that commands a keener rivalry for admission. It is an institution of which Englishmen are proud, and justly so.

THE OLDER MEETING-PLACES.

For many centuries the House of Commons has held its sessions at Westminster, a city which has now become a part of Greater London. Originally it met in the chapter house or refectory of Westminster Abbey, a structure which dates from the time of Edward the Confessor, last of the Saxon kings. Then the Commons moved to St. Stephen's Chapel

within the palace of Westminster, where it continued its sessions right through the eras of Tudors, Stuarts, and Hanoverians until 1834, when the palace was gutted by fire. Thereupon the new palace of Westminster, or the Houses of Parliament, as the great structure is now called, was erected during the years 1837–1852.

WHERE THE HOUSE NOW SITS.

The Houses of Parliament flank the left shore of the Thames midway between Chelsea Bridge and the Tower of London. Covering an area of nine acres they form a vast edifice containing more than twelve hundred rooms, the largest building in Europe with the exception of the Vatican. The architecture of the building is Tudor Gothic and it is said to be the most impressive Gothic structure in existence. In the heart of the pile is a great central hall; to the south of this hall is the green chamber of the House of Commons; and to the north of it the red chamber of the House of Lords. Reaching out around these two great chambers is a labyrinth of lobbies, corridors, committee rooms, offices, retiring rooms, and other subsidiaries. In various parts of the building likewise there are libraries, dining halls, and smoking rooms, as well as living quarters for certain officers of parliament such as the speaker, the clerk, and the sergeant-at-arms.

THE COMMONS' CHAMBER.

The chamber occupied by the House of Commons is cut off from all external outlook. The only light comes from windows above. The room is oblong in shape with a broad aisle running down the center. At one end of this aisle is the entrance; at the other end the speaker's chair is placed. There is a sliding brass rail or barrier at the entrance, alongside which sits the sergeant-at-arms. None but members are permitted to pass this entrance, which is called the bar of the House. On either side of the aisle are long benches upholstered in green leather, rising tier on tier. The members sit (or sprawl) on these benches, with no desks in front of them. No seats are assigned to individual members. It is odd, by the way, that this "best club" should have such deficient accommodation. By crowding the benches and using some reserved space in the side galleries it is possible to provide seats for about 450 members; but the total membership of the House is more than 600, which means that with anything like a full attendance many are compelled to stand.

But anything like a full attendance is a rare occurrence. Two hundred is deemed to be a good turnout unless something of great interest is under discussion. Although no seats are regularly as-

signed, those members who support the ministry customarily occupy the benches to the speaker's right while members of the opposition sit on his left.[1] The two front benches which face each other nearest the speaker's chair are known as the Treasury bench and the front Opposition bench respectively. The custom of the House is that members of the ministry sit on the one and the leading personages of the opposition on the other

THE FRONT BENCHES.

Although members of the House are elected by districts or constituencies they look upon themselves as representatives of the United Kingdom at large. They do not think of their own districts first, last, and all the time as many American congressmen and French deputies do. The House is both a representative and deliberative body, but deliberation is stressed more than representation. Is it proper that this should be so? Should a legislator be guided by his own conscience and patriotism or should he always defer to the interests and desires of the constituents who elected him?

THE ENGLISH THEORY OF REPRESENTATION.

That is an old question A hundred and seventy years ago Edmund Burke dealt with it on the hustings at Bristol, and his speech has become a classic on one side of the controversy. Burke declared that a member of the House ought to maintain the most unreserved communication with the voters of his constituency; he ought to discover their wishes and give such desires great weight. To that extent he should serve as their delegate. "But his own opinions, his mature judgment, and his enlightened conscience," Burke went on to say, "should not be sacrificed by a member of parliament to any man, or any set of men, constituents, or outsiders." A member's conscience is a "trust from Providence, for the abuse of which he is deeply answerable." He does not derive his conscience from the laws or the constitution. "Your representative owes you not his industry only, but his judgment also, and he betrays instead of serves you if he sacrifices it to your opinions "

EDMUND BURKE'S VIEW OF IT.

Some years later, at the election of 1780, Burke returned to a defense of his position. In another striking speech he declared to his constituents: "I did not obey your instructions. No, I conformed to the instructions of truth and nature." But this defense did not

[1] When the ministerial party has a large majority, however, the overflow goes to the left also

avail. The resentment of the Bristol voters against Burke's defiance of their wishes was too strong to overcome and he was obliged to retire from the contest, badly beaten. During the past century the constituency of Bristol has been roundly condemned by political philosophers for having placed its own selfish interest ahead of parliamentary independence, and thus repudiating so distinguished a representative; but are there many election districts in any country that would not do the same if the issue were boldly presented to them as it was in this instance?

A WORD IN DEFENSE OF THE DELEGATE THEORY.

The chief function of the House of Commons is to protect the people's rights and to assure their liberties. It was for the attainment of these ends that the House developed. But to whom, other than to themselves, can the determination of the people's rights and liberties be entrusted? A government in which a few people, howsoever chosen, determine at their own discretion what the rights of other people are,—such a government would not be a representative government. The will of the voters may be capricious, and their opinions occasionally erratic; but is there any guarantee that the will and opinions of an irresponsible parliament would be less so? The world has tried many ways of winnowing the politically wise from the foolish—birth, education, lot, election—but the experience of centuries has taught that by any of these methods you get a lot of chaff with the wheat. There is no reason to believe that the judgment of representatives, in the long run and on the average, is of higher quality than the public opinion of those who have chosen them. That is the ultimate justification of the delegate theory which Burke scorned.

HOW THE HOUSE BEGINS ITS WORK.

On the first day of the session the members of the Commons assemble in their own chamber. If it is a new parliament, that is, a parliament meeting for the first time after a general election, the members must begin by electing a speaker. But by an ancient tradition they cannot do this until the lord chancellor, in the name of the crown, directs it to be done, and by usage he does this from his place in the House of Lords. So the commoners spend a few minutes in a buzz of conversation until the official messenger of the Lords (commonly known as Black Rod),[1] appears and invites the House to come

[1] His full title is "Gentleman Usher of the Black Rod." His insignia of office is an ebony rod tipped with gold.

across the hall. Whereupon, headed by the clerk of the House, the commoners troop through the great corridor to the bar of the Lords where they stand in silence while the lord chancellor announces "His Majesty's pleasure is that you proceed to the choice of some discreet and learned person to be your speaker." Then the commoners, without a word in reply, wander back to their own chamber and with the clerk of the House as their temporary mentor proceed to do as they have been bidden.

ELECTING A SPEAKER.

The election of a speaker, as will be indicated a little later, is usually a mere matter of form and takes but a moment. The choice must be approved by the crown, but this also is a mere formality, the royal approbation being announced to the Commons by the lord chancellor. The speaker now takes the oath of allegiance and the members, in groups of five at a time, do likewise. Then comes another call to the House of Lords to hear the speech from the throne.[1] Preceded this time by the sergeant-at-arms, the members once more betake themselves to the gilded chamber where they crowd into the rear portion of it and into the galleries as best they can.

THE SPEECH FROM THE THRONE.

The speech from the throne is delivered either by the monarch in person or by someone whom he designates for this duty. It is never a long address and its delivery usually consumes but a few minutes. As has already been mentioned, it is prepared by the prime minister in consultation with his cabinet. It comments upon the general state of the realm, adds a paragraph or two on foreign relations, foreshadows the more important government measures which are to be introduced, and invites the House of Commons to grant the appropriations needed for carrying on the government. But whatever the speech may contain, the king has had little or nothing to do with its preparation. He may, and sometimes does, have a poor opinion of it. "Did I deliver the speech well?" asked George III on one occasion. "Very well, Your Majesty," was the reply. "Well, I'm glad," answered the king, "for there was nothing in it."

When the speech is finished the commoners return to their own chamber where the speech is reread to them by the speaker. Before this is done, however, the House advances a dummy bill through its

[1] In the case of a newly-elected parliament the election of the speaker takes place on the first day and the speech from the throne is delivered on the day following.

first stage. This is done to demonstrate that it can do business on its own authority, without waiting for a message from the crown. The bill selected for this purpose is always the same, namely, "A Bill for the Better Preventing of Clandestine Outlawries." It has been given its first reading at every parliament for nearly a hundred years, but is never advanced to a second reading.

THE DUMMY BILL.

Then the House proceeds to debate an "address in reply" to the speech from the throne. This address is always in common form, being merely an expression of loyalty to the crown and of satisfaction with the recommendations made. Its adoption is moved and seconded by two private members from the ministerial side of the House who are designated for this purpose by the prime minister. The opposition may then propose amendments to the address, in which case the first debate of the session is precipitated. As a rule, however, the address is adopted without change and the House is then ready to plunge into its routine business.

THE ADDRESS IN REPLY.

The House of Commons meets on Mondays, Tuesdays, Wednesdays, and Thursdays, at quarter to three o'clock in the afternoon. On Fridays it meets at eleven in the forenoon. These Friday sittings are reserved for private business, motions, petitions, and notices. No meetings are ordinarily held on Saturday, the chamber being thrown open to visitors on that day. The forenoons are kept free for committee work. The sittings of the House usually last through the afternoon and into the evening. There is no regular adjournment for the evening dinner hour but the chamber is usually well emptied between the hours of seven and nine, unless business of an exciting nature is before the House. The rule is that opposed business may not be proceeded with after eleven o'clock at night unless on motion of a minister; but unopposed business may be continued for a half hour later. At 11:30 the House adjourns unless certain specified measures are under consideration, in which case it may remain in session all night and even through the whole of the next day.[1] The Friday sittings always close at 4:30 P.M. no matter what business is under consideration.

THE REGULAR SITTINGS.

Despite this possibility of all-night sessions, the rules of the House

[1] The longest continuous sitting without adjournment was one which lasted from Monday afternoon until Wednesday morning, during the session of 1881.

permit the application of the closure in order to shut off debate, as will later be explained; and the ministers regularly ask the House to limit debate in this way whenever the dilatory tactics of the opposition are seriously interfering with the progress of government measures. Forty members of the House constitute a quorum, which is only about seven per cent of the entire membership. In the American House of Representatives the requirement is a majority, or two hundred and eighteen members. Although the actual attendance at sittings of the House of Commons is relatively slim, many other members are within reach in the lobbies, the smoking room, the library, the restaurant, or during fine afternoons on the terrace. They are at hand when needed—if any question is pressed to a vote. But when the House is plodding its way through routine matters the back benches yawn in emptiness. In fact a great deal of business is done with fewer than forty members present, in other words without a quorum, for the speaker pays no attention to the quorum requirement unless some member asks for a count

THE SMALL QUORUM.

THE SPEAKER

The speaker is the most conspicuous figure in the House.[1] Despite his title, he never speaks in debate nor does he say more than a minimum in any other connection. He is supposed to speak for the House, not to it. His position is as old as the House itself and his title is derived from the fact that he alone, in early days, had the right to speak for the House of Commons before the king. Originally the speaker's chief function was to take petitions and resolutions from the House and lay them before the king, for it will be recalled that in early days the House of Commons was a petitioning rather than a lawmaking body. The House besought the king to redress grievances by making laws, and the king complied when he felt so inclined. The speaker was merely the bearer of these numerous and sometimes unwelcome requests. Hence his post in early days was no sinecure, for if the monarch happened to be out of humor, Mr. Speaker sometimes found himself hustled off to the Tower.

THE SPEAKER.

[1] In addition to the speaker, the chief officers of the House are the clerk and the sergeant-at-arms Both are appointed by the crown on the advice of the prime minister and both hold office for life. The clerk and his assistants are in charge of the House records; the sergeant-at-arms has various ceremonial functions and is the agent of the House in the exercise of its authority.

The first to bear the title of speaker was Sir Thomas Hungerford in 1376. For several centuries the office was usually held by a lawyer, and some noted jurists figure on the lists of speakers, including Sir Thomas More and Sir Edward Coke. When the crown and parliament came into conflict, as so often happened during the Stuart era, the speaker had to be a rare diplomat in order to keep from incurring the wrath of the one or the other. Students of English constitutional history will recall, for example, the case of Sir William Lenthal, who was speaker of the House when Charles I strode into the chamber with a troop of soldiers and tried to arrest five of its members. But the offending members had been warned and were gone from the chamber before the king arrived. Advancing to the speaker's chair, the king demanded to know whether any of the five members were present. Lenthal fell on his knees and replied, "May it please Your Majesty, I have neither eyes to see nor tongue to speak in this place save as this House is pleased to direct me." "I see," said the king, "that my birds are flown," and with that he stalked out of the House amid cries of "Privilege! Privilege!"

SOME NOTABLE SPEAKERS.

Although the choice of a speaker must be approved by the king, it is inconceivable that this approval will ever be refused, for the selection is really made by the prime minister before the House acts at all. In other words, the prime minister selects the speaker after consultation with the members of his cabinet and after assuring himself that the choice is generally acceptable to the House. The nomination is then made and seconded by two private members in order to perpetuate the fiction that the choice is that of the whole House and not that of the ministers. Both the House and the king accept this nomination as a matter of course, for neither could refuse their concurrence without registering a lack of confidence in the ministry.[1]

HOW THE SPEAKER IS CHOSEN.

So, when the prime minister has chosen his man, all else is mere routine. The so-termed "election by the House" is not an election but a pantomime. The clerk starts the proceedings. An ancient custom forbids him to utter a syllable, so he merely points with his right forefinger at some member of the House whose name has been given to him as mover of the

THE PICTURESQUE PANTOMIME.

[1] The approval of the crown has never been denied since the principle of ministerial responsibility became recognized. The last refusal was in the case of Edward Seymour (1687).

motion. This member thereupon rises and moves that so-and-so "do take the chair of this House as speaker." Then the clerk, in the same dumb pantomime, indicates the other member who has been picked to second the motion. The speaker-designate then rises in his place and humbly submits himself to the will of the House, which acclaims him with cheers.[1]

The motion to elect is not customarily put to a vote, for there is no contest save on the rarest occasions. The speaker who has served in the preceding parliament is by custom always reëlected, even though the ministry has changed. It has not been uncommon, therefore, for a Liberal to serve as speaker with the Conservatives in power, and vice versa. If a speaker dies or does not return as a member of the new parliament, the prime minister makes a new choice, usually designating the deputy speaker for promotion to the speakership. Occasionally, however, the opposition also puts up a candidate and a vote has to be taken.

THE SPEAKER A NON-PARTISAN.

The speaker, from the moment he takes the chair, ceases to be a party man. He discards his party colors, be they buff, or blue, or red. He is no longer a Liberal, a Conservative, or a Labor partisan. He attends no more party gatherings and is not called into consultation on any matters of party policy. He must be a neutral in politics. This neutrality, moreover, is not a fiction, as is shown by the fact that the speaker is never opposed for reëlection in his own constituency. At each general election his constituency (in accordance with a local party armistice) sends him back to parliament unopposed—so long as he remains speaker. Politics is adjourned in the speaker's bailiwick. When a member of the House of Commons is chosen to the speakership, therefore, he need give no further thought to the repair of his own political ramparts. He has made his calling and election sure.

PRESTIGE OF THE OFFICE.

No wonder the speakership is regarded as a prize, an office not only of great honor but of long tenure. Its emoluments are also substantial. The speaker receives a liberal salary; he has an official residence in Westminster Palace, and he gets both a pension and a peerage when he retires.[2] But every rose has its thorn, and the speaker must accept with his office a

[1] For a detailed account of the procedure see N. L. Hill and H W. Stoke, *The Background of European Governments* (New York, 1935), pp. 124–130.

[2] Both the peerage and the pension are matters of usage. There is no statutory provision that the speaker shall have either. But when a speaker retires it is the custom of the House to present an address to the crown stating its willingness

sentence of exile from politics. That comes hard to one who likes the wager of battle. Whether in entertaining his friends at dinner, or in recognizing members who desire to speak, or in ruling on points of order, he must act with the impartiality of a chief justice. If he has personal and political likes or dislikes, as most public men have, he must somehow manage to keep them submerged.

Even when called upon to give the casting vote in case of a tie, the English speaker does not act in accord with his own political or personal opinions. He breaks a tie by voting in obedience to certain well-established principles. If, for example, his negative vote would determine the defeat of a measure while his affirmative vote would prolong its consideration, the speaker always votes "Aye." If a tie comes on a proposal to adjourn the debate, he always votes "No." If he be in doubt as to how he should vote, or as to the proper ruling on any question of order or privilege, he inquires from the clerk of the House, who is a skilled parliamentarian. The speaker's rulings on points of order are final; they may not be appealed to the House. The speaker may, if he desires, submit any questions to the House for its opinion and may be guided by its decision, but when he makes a ruling on his own responsibility there is no overriding it. The House, on the other hand, can suspend its own rules by a majority vote at any time and thereby circumvent a speaker's ruling, but it very rarely finds occasion for doing so. The rules are suspended now and then, but not for this purpose.

THE SPEAKER'S WORK.

The speaker's chair is a high-canopied throne at the head of the main aisle. Below and in front of it is the clerk's table. At the appointed hour for opening a sitting of the House the speaker's procession formally enters the chamber. Prayers are read by the chaplain; the mace is laid on the table and the speaker counts the members to ascertain the presence of a quorum. If forty members are not in the chamber, he takes a sandglass which is kept at his right hand and turns it over. Meanwhile the bells in the corridors, lobbies, reading rooms, smoking rooms, and library begin to tinkle. The sand takes about two minutes to run from one of the glass compartments into the other and if a second count at the expiration of this interval discloses

HOW THE HOUSE OPENS.

to vote the money for a pension if the crown asks for it. The peerage, of course, is within the gift of the crown without parliamentary action. In 1928 the retiring speaker, Mr. J. H. Whitley, declined this honor.

fewer than forty members, the speaker may adjourn the sitting.[1] The same procedure is gone through whenever anyone, after the sitting has begun, raises the question of a quorum. Adjournments for want of a quorum take place very seldom, for it is a rare occasion when fewer than forty members are not somewhere within call. It is the business of the "whips" (of whom more will be said hereafter) to see that these members are rounded up when needed.

ROUTINE PROCEDURE OF THE HOUSE

THE RULES OF THE HOUSE.

There is a common impression among Englishmen that the House of Commons, unlike other legislative bodies, has no printed rules. This popular impression is the basis of the hackneyed tale about a new member who went to the clerk's desk on the first day and asked for a book of rules. "There is no book of rules," replied the clerk. "Then how am I to learn the rules of the House?" queried the neophyte. "By breaking them, sir," came the answer. It is true that the House has no book of rules but its "standing orders" amount to the same thing, although it may be added that these standing orders do not cover the whole procedure of the House, much of which rests upon usage. And the usages are not all to be found in any printed book.[2] Many years of parliamentary experience are required to familiarize a member with all the intricacies of parliamentary procedure, and in that sense it can truthfully be said that new members learn the rules by breaking them and being called to order.

THEIR PERMANENCE.

Unlike those of Congress, the rules and standing orders of the Commons are permanent. They do not have to be readopted after each general election Nor have they the rigidity of congressional rules, inasmuch as they can be suspended at any time, or amended, or repealed, by a majority vote. One might think this is a dangerous power to place in the hands of the majority, but it has not been abused. When the rules of the House are suspended it is usually for the sole purpose of expediting business, with the consent of the minority, and not as a means of putting legislation through by steam-roller methods.

[1] If, however, the business before the House be the consideration of a message from the crown, it is proceeded with despite the presence of fewer than forty members.

[2] Most of them, however, are in Sir Erskine May's book on parliamentary procedure, which is the English parliamentarian's Bible, just as Asher C. Hinds' *Precedents* serves a like purpose in the American House of Representatives.

Most of the standing orders deal with the allocation of time for different classes of business (such as government measures, private bills, private members' bills, and questions) and with the course of procedure which these various matters must take. Measures introduced by the ministry, as will be more fully explained later, have the right of way. Private members' bills are crowded into odd hours. At the commencement of each daily sitting a limited amount of time, not exceeding an hour, is set apart for questions. This is a feature of English parliamentary procedure which has no counterpart in American legislatures. These questions, which may be asked by any member, are addressed to the minister within whose field the matter belongs, or if the minister be a member of the House of Lords, to his representative in the Commons. No member may ask more than four questions at a single sitting. Save in exceptional cases it is required that due notice of intention to ask questions shall be given and the questions then appear on a printed list, which each member receives at the beginning of the sitting. The questions are restricted to requests for information and must not contain any "argument, inference, imputation, epithet, or ironical expression." But some questions come perilously near offending in this way and the speaker of the House, in such cases, may reframe them or even reject them altogether. The minister to whom a question is addressed may decline to answer it if it deals with some matter of diplomatic or domestic policy which ought to be kept confidential.

NATURE OF THE RULES.

THE "QUESTION TIME"

When "question time" arrives in the House, therefore, the members flock into their seats, for the interrogations and answers are a daily source of enlightenment—and often of amusement "I beg to ask the chancellor of the exchequer question number one," says a member from one of the rear opposition benches. There is a fluttering of leaves as everyone turns to the question as it stands printed on the Orders of the Day. Then the chancellor of the exchequer, or his parliamentary secretary, rising from the Treasury bench, proceeds to read the answer from the typewritten sheets in his hand. Sometimes it is a long explanation; sometimes a single curt sentence. Following the explanation, supplementary questions may be asked, but no debate or discussion follows the giving of replies.

CHARACTER OF THE QUESTIONS ASKED IN THE HOUSE.

Herein the procedure differs widely from the interpellation in the

French Chamber of Deputies where, as will be seen later, the minister's reply is always followed by a debate and a vote.

COMPARED WITH THE INTERPELLATIONS.

When a minister answers any question in the House of Commons there is no way of determining whether a majority of the members regard the answer as satisfactory. The House merely proceeds to the next item on the notice paper. At the close of the question period, however, any forty members can precipitate a discussion of a minister's reply by rising in support of a motion to adjourn. Then, if the speaker of the House accepts this motion as falling within the principles on which such motions are permitted, a debate is set for the same evening. But this procedure is not common. Large numbers of questions are placed on the Orders, many of them dealing with very trivial matters. They average from one hundred and fifty to two hundred per day.[1] Some years ago a committee which investigated the possibility of cutting the expenses of government made an estimate that the preparation of answers cost the English taxpayer about seven dollars and a half per question.

But members of the Commons value their right to ask questions and would not permit it to be curtailed. The moral effect upon the

VALUE OF THE QUESTION PRIVILEGE.

ministers is good, for they know that any administrative action, however unimportant, may be dragged out into the glare of publicity. Hence they must be vigilant during every question hour. Many of the questions seem trivial, but the ministers have learned that more may lurk in a question than appears on the surface. An innocent-looking query is sometimes propounded with intent to draw an offhand answer. Then comes a supplementary question which discloses what the questioner is really gunning for. The ministers are aware of all this (having been themselves the framers of questions while in opposition) and nowadays they are not easily trapped.

The importance of the question hour, with all that it implies, has not been sufficiently appreciated by foreign students of English government. It is an effective check upon those bureaucratic tendencies which are bound to appear in every government. It keeps the experts responsive to a body of laymen. Ministers get irritated at the flood of questions, and their subordinates (who have to pre-

[1] If the end of the question hour arrives before all the questions have been answered, the remaining answers are printed in the official report of the House proceedings.

pare the answers) blaspheme at the members who frame them; but the private citizen has no reason to complain. The question hour in the House of Commons is probably worth all that it costs the British taxpayer.

While there is no opportunity for debate in connection with the questions, there is room for plenty of it at various stages in the passage of legislative measures. Most speeches in the House of Commons are short; it is quite unusual for anyone to speak longer than an hour, although this occasionally happens when measures of great importance are under discussion. The longest speech, according to the records, was a deliverance by Brougham who spoke for more than six hours in 1828 "to a thin and exhausted House." Prynne's historic plea for the life of Charles I (1648) occupied almost the same length of time, and Gladstone on one occasion spoke for five hours.[1] No time limit is fixed by the rules But there is a limit to the patience of the members, and even the whips cannot always keep a quorum when long-winded orators take the floor. Speeches, whatever their length, are recorded verbatim and published in bulky volumes known as the *Parliamentary Debates*, or more commonly as "Hansard."[2] An hour's speech occupies fifteen or sixteen columns of this publication, hence a single debate may occupy a hundred pages or more.

DEBATES IN THE HOUSE.

THE COMMITTEE SYSTEM

In legislative bodies throughout the world a large part of the preliminary work is assigned to committees. The House of Commons is no exception. All bills now go automatically to one of its regular committees unless the House votes otherwise in particular cases. These committees are of various types. First, there are the *standing* committees on public bills, as they are called,—committees which are appointed at the opening of a session and remain unchanged until parliament is prorogued. To these standing committees, of which there are now five in all, certain classes of public bills

COMMITTEES OF THE HOUSE:

1. STANDING COMMITTEES.

[1] None of these, of course, constitutes a world record. Pliny once spoke in the Roman Senate for seven hours. Several "filibustering" speeches in Congress have been longer than Pliny's.

[2] The debates were originally published by a printer named Hansard as a private venture. They are now issued as an official publication under the control of the House.

are referred; each committee receiving the measures which the speaker assigns to it in accordance with the established rules. Second, there are *select* committees on public bills appointed to consider and report upon individual measures or questions which involve some new principle, or upon some subject which has not yet come before the House in the form of a bill. They gather information, examine witnesses, and so on When their work is done they make a report and go out of existence. Third, there are some *sessional* committees, appointed for a single session to deal with certain designated matters such as the examination of petitions. Fourth, and highly important, are the *committees on private bills*, of which more will be said later.[1]

2 SELECT COMMITTEES.

3 SESSIONAL COMMITTEES.

4. PRIVATE BILLS COMMITTEES.

Finally, there is the Committee of the Whole House In other words, the entire House sits as a committee; the speaker leaves the chair and his place is taken by a chairman who is appointed afresh in each new parliament and is a stanch party man; the mace is placed under the table as a sign that the House, as a House, has adjourned.[2] When the House resolves itself into Committee of the Whole its rules of procedure are relaxed; a member may speak several times on the same question if he desires; motions do not need a seconder; and any matter which is voted upon can easily be opened for reconsideration Because procedure in the Committee of the Whole House is so simple and flexible the practice of considering the details of measures in this way has proved popular not only in the House of Commons at Westminster but in the House of Representatives at Washington.[3] It makes for informality if not for speed. When the Committee of the Whole House has finished with its consideration of a measure, item by item, a motion is made that the committee "rise and report." The speaker then resumes the chair and the chairman reports the committee's action, in other words the House reports to itself and then proceeds to adopt its own recommendations.

5. COMMITTEE OF THE WHOLE HOUSE.

In American legislative bodies, with the exception of the two

[1] Pp. 215-219.

[2] He does not sit on the speaker's throne but at the clerk's table.

[3] When the House of Commons is discussing revenue measures the Committee of the Whole House is called the Committee of Ways and Means; when it is considering appropriations or expenditures it is called the Committee of Supply. Colloquially, the members speak of "the House in Ways and Means" or "the House in Supply."

Houses of Congress, all committees (apart from the Committee of the Whole) are ordinarily appointed by the presiding officer. This is true of most state legislatures, city councils, and indeed of unofficial organizations. In the House of Representatives at Washington the appointing of committees was for a long time in the hands of the speaker and this prerogative made him the virtual master of business. During the years 1910–1911, however, the rules of the House of Representatives were changed and the power of appointing committees was taken from the speaker. Committees in both branches of Congress are now appointed, in a roundabout way, by the Senate and the House themselves.[1] In the House of Commons the speaker has never had, at any time, the function of appointing committees. To give him this power would be to make his office the very negation of what it is supposed to be, namely, a sanctum of neutrality amid the warring factions of partisanship.

HOW COMMITTEES ARE CHOSEN IN AMERICA.

Committees in the House of Commons (with the exception of the Committee of the Whole House) are chosen by a committee of selection.[2] This committee of selection, which contains eleven members, is named by the House itself at the beginning of each parliamentary session. But while ostensibly named by the House itself, the membership of the committee of selection is arranged in advance by a conference between the prime minister and the leader of the opposition. In making up the various committees, this committee of selection does not pay strict attention to party lines, although members of the different parties are selected in something like the proportion that they have in the House as a whole. Nor does it give undue attention to seniority as is the case at Washington. Each standing committee ordinarily contains from thirty to fifty members, but the standing orders of the House provide that from ten to thirty-five supernumerary members may be added to serve during the consideration of any designated measure; the design being to strengthen the committee when some matter requiring special knowledge is before it. Select committees are much smaller; they usually have fifteen members, while the committees on private bills

HOW COMMITTEES ARE CHOSEN IN ENGLAND.

[1] See the author's *Government of the United States* (4th edition, New York, 1936), pp 270–272; 321–325.

[2] Nowadays, however, the names of the persons who are to constitute a new select committee are usually included in the motion which proposes such a committee's appointment.

have four members only. Each committee in the House of Commons has a chairman, but this official is neither named by the committee of selection, as is the practice in Congress, nor chosen by the committee itself. Instead, the committee of selection names a panel of chairmen and this panel chooses from its own membership a chairman for each committee.[1]

THE CABINET AS THE CHIEF COMMITTEE OF PARLIAMENT.

The cabinet is not officially ranked as a committee of the House of Commons, yet it is in fact the greatest parliamentary committee of them all. It is the steering committee. It is the originator and the censor of all important business. Nothing of any general importance has much chance of getting through the House of Commons unless the ministry favors it or at least refrains from opposing it; on the other hand a measure has every chance of passing if the cabinet lends its support. There are exceptions to this general rule, of course, and these exceptions are naturally more frequent when a ministry is in office without having a majority of its own party behind it—as has happened in the case of the two Labor cabinets. But when a ministry controls a majority, as it usually does, there is no gainsaying its mastery of the legislative program.

ITS RELATION TO THE REGULAR COMMITTEES.

Nevertheless the cabinet's control of committees is by no means so strong as its control of the House. Party discipline is not so strict in the one as in the other. Hence it frequently happens that a standing committee amends a bill in a way which the ministers do not like. The minister in charge of the bill must then decide (usually in consultation with his colleagues) whether he will accept the amendment or ask the House to strike it out when the committee reports the bill. This the House will do if the ministry insists, but coercive tactics are not popular in England and the ministers often find it wise to concede or to compromise. In any event the minister in charge of a government measure must familiarize himself with every detail of it, must follow its course day by day in committee, and must guide it through the House. It is for this reason that the ministers are the real leaders of the Commons and collectively form "the great standing committee of parliament."

The House of Commons has too much to do. Its members cannot, and do not, familiarize themselves with even a small portion of

[1] In the case of the committees on private bills, however, the chairman is designated by the committee of selection.

the legislation (including private bills) which they enact. Instead of controlling the policy of the government, the majority merely acclaims it, while the minority criticizes it; in neither case is there always a clear understanding of what the policy is. The state legislatures in the United States take much of the legislative burden off Congress, but there are no state legislatures in England. As a remedy for the congestion of business in parliament it has been suggested that regional governments should be established and some of the work devolved upon them. Scotland and Wales would each be given their own regional legislatures, with a certain sphere of legislative authority assigned to them. England would be divided into provinces and dealt with similarly. Northern Ireland is already equipped in this way. The idea of regional devolution has been much discussed but nothing has yet come of it.[1]

CONGESTION OF BUSINESS AND THE PROPOSED REMEDY.

ANALOGIES AND CONTRASTS

Between the House of Representatives and the House of Commons there are many analogies and contrasts. Although one is child of the other, and bears unmistakably the marks of its parentage, the difference in environment has not been without its effect upon both structure and temperament. The House of Commons is the larger body, but it makes a much poorer showing in point of consistent attendance. It is a less animated body, with less noise and bustle and racket on its floor. Looking down from the visitors' gallery one sees the sprinkling of members lolling about on the benches, some chatting with their neighbors, a few paying perfunctory attention to what is going on, and still fewer wholeheartedly interested in the proceedings. The atmosphere is one of nonchalance and leisure. The House of Representatives, on the other hand, seems to a visitor in the gallery to be rushing its business at breakneck speed, with a bumper attendance of members, all of them busy, earnest, scurrying in and out, and with several congressmen seemingly desiring to speak at once. The atmosphere at the Capitol has no aroma of leisure. It can all be summed

THE HOUSE OF COMMONS AND THE HOUSE OF REPRESENTATIVES COMPARED.

IN GENERAL ATMOSPHERE.

[1] The subject is discussed at length by W. H. Chiao in his *Devolution in Great Britain* (New York, 1926). Alternative methods of improving the work of the House (by reducing the size of committees, etc.) are put forward in W. Ivor Jennings, *Parliamentary Reform* (London, 1934).

up in the saying that one body is English while the other is American.

In America the speaker of the House is always a party man, chosen by a caucus of the majority members. His election is always opposed by the House minority and when he takes the chair he does not discard his party allegiance. On the contrary, he sometimes becomes a more aggressive partisan than he was before. The standing committees of the House of Representatives are much more numerous than those of the House of Commons and (with one exception) are considerably smaller in membership. In Congress the chairman of each committee is designated when the committee is formed and the chairmanship almost always goes to the senior majority member; that is, to the member from the dominant party who has served longest on the committee.[1] In the House of Commons seniority of service also counts in the sense that a young or inexperienced member is not made chairman of an important standing committee, but among older and more experienced committeemen no stress is laid on relative length of service. Personal ability and the capacity to preside are what count at Westminster when chairmanships are being allotted.

THE TWO SPEAKERS.

Another difference is that at Washington all measures, including money bills, go to a standing committee before being taken up by the House of Representatives in Committee of the Whole, whereas in England money bills go to this latter committee directly. Congress makes no distinction, moreover, between public and private bills in the English sense. Whether bills are general or special in their scope they all go to the regular committees. Most of the bills which go to committees in the House of Representatives never come back again; they die and are buried in the committee's files. In the House of Commons, on the other hand, every committee must return all the bills assigned to it for consideration. Again, the dominant party in the House of Representatives always obtains a majority on every important committee, a majority which is usually sufficient to ensure its control of the committee's action. In the House of Commons this is not necessarily the case. The standing committees are made up in a manner favorable to the majority party in the House, but the committees on private bills have only four members each and are constituted without any reference to party affiliations.

CLASSIFICATION OF BILLS.

[1] The next member in order of seniority is known in congressional parlance as the "ranking member."

Finally, the most important of all contrasts is to be found in the fact that the cabinet of the United States has no direct connection with the process of lawmaking. It is not a steering committee of Congress, and Congress would resent its assumption of any such rôle. By virtue of the ministerial system the House of Commons is provided with a strong group of executive leaders who guide and virtually dominate its work. In the older textbooks on English government it is commonly stated that "the House of Commons controls the cabinet." Fundamentally that is true, for the House can dismiss the cabinet from office at any time. But it is equally true that "the cabinet controls the House." Business is done because the cabinet leads and the House follows It may refuse to follow, to be sure, but the fact remains that it rarely does so under any circumstances and practically never when the cabinet system is functioning as the theory of English government expects it to function. But the House of Representatives feels itself at liberty to bolt presidential leadership at any time and on any question. In no sense does the cabinet control the House at Washington.

LEADERSHIP.

The House of Commons must be summoned into session at least once a year or, to put it more accurately, there must not be more than a twelve-month interval between the close of one session and the beginning of another. A session usually lasts from five to seven months. The House is ordinarily called together early in November. It adjourns from just before Christmas until late in January. Then it resumes and continues to sit until June or July, or perhaps a little later, with brief adjournments over week-ends and holidays. Each House may adjourn without reference to the other, which is not the rule at Washington. The President of the United States can adjourn Congress, in case the two Houses fail to agree on adjournment; the crown in England cannot adjourn either House. But when the cabinet decides that it is time to bring a parliamentary session to a close, it so informs the king, and parliament is accordingly "prorogued." Both Lords and Commons are prorogued together. Prorogation terminates all pending business; hence a measure which has not been finally passed by both Houses at the date of prorogation must be introduced anew at the next session and must go through all its stages over again in order to become a law. When parliament has run its legal course of five years, or when the cabinet at an earlier date desires a general election, the crown "dissolves" the House

ANNUAL SESSIONS.

and summons a new parliament. The terms adjournment, prorogation, and dissolution refer, therefore, to the end of a sitting, the end of a session, and the end of a parliament.

In summoning parliament both the Lords and Commons are invariably called to meet at the same time. In the United States the Senate may be called into session, and sometimes has been so called, without the House of Representatives. This is because its action may be needed to confirm presidential appointments or to ratify treaties. The British House of Lords has no powers of this character and there is accordingly no reason why it should meet when the Commons is not in session. Even for impeachments, the initiative of the latter is essential.

The organization of the House of Commons is a theme which has been dealt with in many books Short descriptions may be found in Sir John A. R. Marriott, *Mechanism of the Modern State* (2 vols., Oxford, 1927), Vol. I, pp. 509–532; Sir William R. Anson, *Law and Custom of the Constitution* (5th edition, Oxford, 1922), Vol. I, pp. 253–321; and Frederic A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), pp. 363–394.

More elaborately the topic is discussed in Herman Finer, *Theory and Practice of Modern Government* (2 vols., New York, 1932), pp. 780–877, G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (London, 1929), Sir Thomas Erskine May, *Parliamentary Practice* (13th edition, London, 1924), Josef Redlich, *The Procedure of the House of Commons* (3 vols., London, 1908), Michael MacDonagh, *The Pageant of Parliament* (2 vols., New York, 1921), H. Graham, *The Mother of Parliaments* (Boston, 1911), Sir Henry Lucy, *Lords and Commoners* (London, 1921), Robert Luce, *Legislative Procedure* (Boston, 1922), *passim*, and A. I. Dasent, *The Speakers of the House of Commons* (New York, 1911).

The *Standing Orders of the House of Commons* (revised and republished every few years) should of course be consulted.

CHAPTER XII

THE PROCESS OF LAWMAKING IN PARLIAMENT

The House of Commons is a very clumsy machine, but it works, and on the whole it turns out a good deal of work. It would be a better machine if men were a little less vain and more given to silence.—*John Bright.*

In the early stages of its history the House of Commons took no part in the formal enactment of laws. It merely petitioned the crown to make laws. Laws based upon the petitions of the House were then framed and enacted, at its own discretion, by the crown in council. But these laws were sometimes not in accord with the spirit of the petitions, and there were frequent protests from the commoners on that account. Eventually, in 1414, the king agreed "that from henceforth nothing be enacted to the petition of the Commons contrary to their asking." And soon thereafter the House of Commons adopted the plan of presenting its petitions in the form of bills, all ready to be enacted. With this step came the need for a system of parliamentary procedure, and presently there developed the practice of giving each measure three readings, referring it to a committee, and holding debates on it when differences of opinion arose.

THE GENESIS OF LEGISLATIVE PROCEDURE.

The procedure was very simple at first; but year after year new complications were added by action of the House or developed by usage. All systems of legislative procedure tend to become more complicated as they grow older. The existing process of lawmaking in the House of Commons is the outcome of a growth and development which covers nearly five hundred years, and legislative procedure in all other countries is to a large extent modeled upon it. The manual which Thomas Jefferson prepared while he was serving as Vice President (and presiding over the United States Senate) was in all essentials based upon the English parliamentary procedure of his day. The American House of Representatives in 1837 adopted a provision, which is still in force, that Jefferson's manual should govern its pro-

FROM SIMPLE TO COMPLEX.

cedure in all matters not covered by its own rules. Thus it has come to pass that the rules of procedure in Congress owe their fundamentals to the older practice of the British House.

ENGLISH AND AMERICAN PROCEDURE IS SUBSTANTIALLY AKIN.

To the casual visitor, sitting in the galleries, the methods of lawmaking at Westminster and at Washington seem to be wholly unlike. But the differences, save in one important respect, are superficial only. They do not affect the underlying principles, which (with one exception) are the same in all English-speaking legislative chambers. Measures are introduced on both sides of the Atlantic in much the same way; they are given three readings, referred to committees, reported out, debated, amended, and sent to the other chamber. The differences relate principally to the position and powers of the speaker, the organization and work of the committees, the limitations on debate, and the distinction between public and private bills.

BUT THERE IS ONE VERY IMPORTANT DIFFERENCE:

THE DISTINCTION BETWEEN PUBLIC AND PRIVATE BILLS.

This last named difference is the most important one. In parliament a distinction has long been made, and is still made, between public and private bills; in Congress there is no distinction except that the two classes of bills are placed on different calendars. According to British parliamentary practice a public bill is one which affects the general interest and ostensibly concerns the whole people or, at any rate, a large portion of them. A measure for changing the tax laws is a public bill, so is a bill for altering the suffrage, or raising the age of compulsory school attendance, or establishing a new administrative department. A private bill, on the other hand, is one which relates to the interest of some one locality or corporation, municipality, or other "particular person or body of persons."

Thus a bill authorizing the construction of a new street railway, or the extension of an old one, or permitting a city to borrow money for a municipal lighting plant, or empowering a corporation to do something not already authorized by its charter—anything of that sort is a private bill. There are some bills, of course, which come in the twilight zone between these two categories, but so many measures have been presented to parliament and ruled upon during its long history that the precedents now cover almost every conceivable case, and the speaker merely follows these precedents in deciding, when doubt arises, whether a bill belongs in the public or the private class.

When public bills are brought in by a member of the ministry they are known as government measures. All money bills must be so introduced.[1] But public bills (other than those which relate to the raising and spending of money) may also be brought in by any private members; that is, by a member of the House who is not a member of the ministry. Such public bills are known as *private members' bills* and a word of caution should be added lest the reader drop into the pitfall of confusing these "private members' bills" with "private bills." Government bills, money bills, and private members' bills are all *public bills.* In the process of legislation they are so dealt with. Private bills, on the other hand, are based on petitions from the parties directly interested and go through a special procedure. Any bill, whether public or private, may be introduced either in the House of Commons or the House of Lords; the only exception being that money bills must originate in the Commons. As a matter of practice, however, the great majority of all measures originate in that House.

GOVERNMENT BILLS AND PRIVATE MEMBERS' BILLS.

Most of the important measures laid before parliament are government bills, which means that much preliminary consideration is given to them by the cabinet. Important government bills are worked out in all their details at Whitehall before being brought to Westminster. One of the ministers makes the first rough outline of a bill, stating only the main principles. This outline he lays before the cabinet for discussion. If the principles are agreed to, he then hands his outline to his own expert subordinates for elaboration into a finished measure, with sections, subsections, and paragraphs. Thereupon the cabinet gives it a final look-over and the bill is ready to be introduced.

HOW PUBLIC BILLS ARE PREPARED.

The introduction of every bill, whether by the government or by a private member, is preceded by a notice. Then, when the time comes, the bill is handed to the clerk of the House, who reads its title aloud. In most cases the bill has not been put into finished form when the time for its introduction arrives. When that happens the clerk is given a

INTRODUCTION AND FIRST READING.

[1] No money bill can be introduced unless a previous resolution of the House in Committee of Ways and Means has been passed declaring the expediency of incurring certain expenditures or of imposing certain taxes. No such resolution can be moved except by a minister of the crown. The same is true of every bill which, though not in form a money bill, involves in fact a charge on the public funds.

dummy bill with nothing but the title written down. In any event the House, without debate or discussion, accepts this "first reading," and orders the bill to be printed, thus placing it in line for a "second reading." The measure must then wait its turn. If it is a government bill of great importance, however, the minister in charge of it usually gives the House a brief summary of its provisions when it is introduced.[1]

In due course the bill is again reached by the House, and its sponsor moves that it be "read a second time." This second reading gives opportunity for a debate on the principles of the bill. Discussions of individual provisions are out of order, and amendments which merely aim to alter the phraseology of the bill are not considered at this stage.

THE SECOND READING AND REFERENCE TO COMMITTEES.

The question is whether the House desires legislation of the proposed type at all. If the opposition desires to test its strength with the ministry, here is the opportunity to do it. It may move "that the bill be given its second reading this day six months," or (in the latter part of the session) "this day three months" which would put it over to a date when the House is not in session, and hence is equivalent to an indefinite postponement. Or it may offer some resolution which is hostile to the general tenor of the bill. Long debates often mark this stage in the progress of important measures—debates which extend over several days. Such debates are usually followed by a vote (a "division," it is called in England) which determines whether the House approves or disapproves the principles of the bill. In the case of a government measure a defeat at this stage expresses a lack of confidence in the ministry and under normal conditions would compel it to resign. Only on the rarest occasions, however, has a government measure been refused a second reading.

Having passed its second reading the bill enters the *committee stage*. It is referred to a committee for the consideration of its detailed provisions. Ordinarily every public bill (except a money bill) goes to one of the standing committees; but in exceptional cases the House may order it to a select committee.[2] If the measure be a money bill, it goes to the Committee of the Whole House immediately after its second reading.

THE COMMITTEE STAGE.

[1] It sometimes happens, moreover, that the minister in charge of an important bill will "ask leave to introduce it." This provides him with an opportunity to make an extended speech on the measure and for a general debate to arise.

[2] The reference of a public bill to a select committee is usually for the purpose of examining some new principle which has been embodied in the bill.

Moreover, the House may at any time and for any reason order a non-financial measure referred to the Committee of the Whole House, but this is seldom done.

The organization of these various committees has already been explained.[1] Every measure sooner or later reaches the House from a standing committee, a select committee, or from the Committee of the Whole House. Then it enters the *report stage*, being laid before the House in amended and reprinted form. Bills may come back from committees and be given their third reading forthwith, but important measures rarely have any such good fortune. If amendments have been made in committee, these may be debated during the report stage, and alternative amendments offered. All the old questions which were threshed out at the second reading may be debated over again—and in the case of a controversial measure they usually are. At the close of this debate the measure is ready for its third reading. In connection with the third reading of a bill no amendments other than purely verbal ones are in order. If it is desired to change the substance of a clause, even slightly, the bill must go back to committee. The House must now accept or reject the bill as it stands. Rejections at the third reading are not common. Here ends the action of the Commons and the bill goes to the House of Lords for concurrence.

THE REPORT STAGE.

THE THIRD READING.

There all public bills are given their first two readings, considered in Committee of the Whole, referred to a standing committee, reported back with or without amendments, debated, and then adopted or rejected. Under the normal procedure no measure (except a money bill) can be passed unless every word of it has been approved by both Houses. Under the terms of the Parliament Act (1911) a money bill becomes a law one month after its passage by the Commons even if the Lords withhold their concurrence. On other measures, if the two chambers fail to agree, there are two alternatives. An exchange of written messages may take place between committees representing the two Houses in the effort to effect a compromise, and an agreement may be achieved in this way. There is no provision for a joint committee of conference as in Congress. Failing a compromise by written exchanges the House of Commons may decide to repass any public bill at three successive

PROCEDURE IN THE HOUSE OF LORDS.

DISAGREEMENTS.

[1] *Above*, pp. 201–204.

sessions, with an interval of at least two years between the first and final passage, in which case it is sent forward for the assent of the crown notwithstanding the non-concurrence of the Lords. This royal assent, as has been pointed out,' is a mere formality.

British parliamentary procedure is based upon the theory that the initiative, as respects all public measures, belongs to the cabinet and that government measures ought to have the right of way. Hence, although public bills may be introduced by private members, they have relatively little chance of passage or even of prolonged discussion. This is because most of the daily sittings of the House are reserved for government measures and only a few are available for the consideration of private members' bills. Even these sittings, moreover, are taken over by the ministry for government bills when the pressure of business becomes heavy Nevertheless, private members sponsor a great many public bills, and as there is no chance of considering them all, the rules of the House provide that a selection from the entire grist shall be made by lot. At an appointed hour, therefore, those private members who desire to introduce public bills are required to put their cards in a box at the clerk's table, and the clerk draws them out one by one. The member whose name is first drawn gets the opportunity to introduce his bill on the first available day of the session; the second member gets the next available day, and so on till the opportunities are exhausted.

THE THEORY OF BRITISH PARLIAMENTARY PROCEDURE.

PRIVATE MEMBERS' BILLS.

Having had the good fortune to get his bill on the Notice Paper in this way, the private member moves that it be read a first time and secures it a second reading; it then goes to one of the standing committees, and follows the same procedure as other public bills. "If a member is lucky in this lottery and can introduce a bill which is generally popular, and which neither the ministers nor any of his fellow members dislike, and if he possesses the art of appeasing opposition, he may manage adroitly to steer his bill through a parliamentary session." [1] But few members can hope to run this gauntlet successfully and although scores of private members' bills are prepared on the eve of each session it is unusual for more than a half dozen of them to gain places on the statute book before parliament is prorogued or dissolved.

THEY HAVE LITTLE CHANCE OF ENACTMENT.

[1] C. F. G. Masterman, *How England is Governed* (New York, 1922), p. 248.

So much for public bills, whether introduced by the ministry or by private members. All other bills are known as private bills. Most private bills are bills introduced by municipalities or corporations asking for special powers. English municipalities have a broad range of powers laid down by general law, but from time to time they desire special powers in addition. These powers they seek, in many instances, by means of private bills. Every year parliament gives special powers to individual cities (boroughs) in this way. A highly advantageous arrangement this is deemed to be, for it gives flexibility to the system of local government and enables parliament to give one municipality additional powers as an experiment without committing itself to the same policy for all.

PRIVATE BILL PROCEDURE.

These private bills are presented to parliament in a different way and do not follow the same procedure as public bills. They are presented in the form of petitions with the bills attached. They cannot be introduced by merely giving notice on the order paper but must first go before two parliamentary officials (one from each House) known as the Examiners of Petitions for Private Bills. Every petition for a private bill must be preceded by certain published notices, the object of which is to inform those whose private interests may be affected by the bill. Copies must also be sent in advance to the government departments concerned—to the ministry of health in the case of a private bill providing for the extension of a municipal sewerage system, for example, or to the ministry of transport in the case of a bill authorizing the taking of land for a street railway. If the Examiners find that there has been full compliance with the requirements, they so certify, and the bill may then be presented in either House.

THE ESSENTIAL PRELIMINARIES.

On introduction, all private bills are read a first time and ordered to be read a second time. After second reading, if there is no opposition, they are customarily referred to a committee on unopposed bills. If there is opposition a bill goes to one of the private bills committees. These are small committees of disinterested members, who are appointed by the committee of selection from lists prepared by the party whips. Each committee on private bills consists of four members in the Commons. In the House of Lords each private bills

THE SPECIAL COMMITTEES ON PRIVATE BILLS.

committee has five members. The chairman has a casting vote and three members form a quorum. A private bills committee may be named to consider a single bill, but more often every such committee gets a group of similar measures. Before going on a private bills committee, however, each member must sign a declaration that he has no personal interest, and that his constituents have no local interest, in the measures to be considered.

HEARINGS ON PRIVATE BILLS.

The private bills committees, each in its own committee room, give hearings to all who have a definite interest in the bills, whether for or against. Every private bill begins with a preamble setting forth the object of the bill. The committee first hears evidence and arguments on the question whether the object is desirable. Then it decides that the preamble is proved or not proved. If the latter, the bill drops; if the former, the committee proceeds with hearings on the clauses of the bill. These hearings are fair and impartial; they are conducted by paid counsel on both sides, with testimony as in a court of law and arguments at the close. They differ from the legislative committee hearings with which Americans are familiar in that none but persons who have a *locus standi*, in other words a demonstrable interest in the bill, are permitted to give testimony before the committee.

ADVICE FROM THE EXECUTIVE DEPARTMENTS.

The private bills committee, in examining any bill, has at its disposal a report from the ministry of health, the board of trade, the ministry of transport, or the other central department which is most immediately concerned. In this way it can make sure that the measure does not conflict with the general policy of the government or create an undesirable precedent. But it cannot be too strongly emphasized that the work of a private bills committee, while legislative in form, is largely adjudicatory in fact, hence it is done in accordance with a procedure which is quasi-judicial. Party politics have no place in the consideration of private bills.

THE ACTION OF THE HOUSE.

When a private bills committee has reached its decision it reports each measure, favorably or unfavorably, with or without amendments, to the House which its members represent. The committee's report on the bill is almost invariably accepted, although there is no question as to the right of either House to reject a report on a private bill if it chooses to do so. But the members know that the committee has been impartially constituted, that it has given both sides a fair hearing, and that it

has consulted the experts. Occasionally, however, a private bill raises some issue of general policy, reaching far beyond the question immediately covered, and then the House may divide on the committee's report. But as a rule it accepts the committee's recommendation without discussion, and thereafter the private bill takes the same course as a public bill.

MERITS OF THE PLAN.

This method of dealing with private bills has two outstanding merits. It ensures the careful, non-partisan consideration of measures which, from their nature, ought not to be dealt with in a partisan spirit. It saves the time of both chambers. The procedure rests upon the common-sense principle that the time and patience of several hundred legislators should not be consumed, hour after hour, in discussing whether the borough of Battersea should have a new cemetery or the Liverpool Corporation Tramways build two hundred yards of trackage outside the city limits. In Congress, where general and special bills are dealt with in the same way, there is a serious imposition upon the time and patience of the members. Measures which are in effect private bills come before it by the thousands. They are brought in by individual congressmen. One proposes a pension for somebody, another a harbor improvement somewhere, another an official favor for somebody else. All bills in Congress are supposed to be created free and equal; no matter how trivial their importance may be, they are all referred to some committee which may already have its calendar crowded with measures of nation-wide interest. The result is that most of the special bills obtain very little consideration, and unless some influential members of Congress get behind them they are asphyxiated in committee. Most of them probably deserve this fate, but unhappily it is not always the meritorious ones that survive. The worthiness of a special bill in Congress has little to do with its getting a favorable committee report. The main thing is the amount of pressure that the congressman who fathered it can bring to bear.

DEFECTS OF THE BRITISH PRIVATE BILL PROCEDURE.

On the other hand, the English system of private bills procedure has the defect of being expensive. Witnesses must be brought to London, sometimes many of them. Fees are charged for the introduction of a private bill and again at various stages in its progress through parliament. It also becomes necessary, when the bill is opposed, to employ parliamentary agents who exact substantial remuneration. These

parliamentary agents are professional law promoters; they are specialists in their work, and almost without exception they are lawyers of high standing.[1] But any person may become a parliamentary agent by registering as such and filing a bond. London has lots of them, and the best ones charge high fees for their services. They are not lobbyists in the American sense; their business is not to roam the corridors buttonholing members. They merely supervise the drafting of a private bill, see that the required notices are given, present the evidence to the committees, and make their arguments.

THE SYSTEM OF "ORDERS."

The quest for private acts of parliament has been considerably slackened by the use of "orders." These orders are issued by a central department and become effective either automatically or when confirmed by parliament.[2] In the latter case they are known as "provisional orders." The reason for the issuance of these orders is that many general laws which have been passed by parliament (such as the Public Health Acts and the various acts relating to railways, street railways, public lighting, poor relief, and education), authorize the various government departments, such as the ministry of health, the board of trade, or the home office, to grant certain powers whenever proper cause for such action can be shown. When, therefore, a power not already conferred by law is desired by some municipality, corporation, or individual, an application is made to whichever department has jurisdiction in the matter.

PROVISIONAL ORDERS.

For example, an application for authority to finance a hospital

[1] There are two grades of lawyers in England—solicitors and barristers. The solicitor deals directly with the client, the barrister (when one is employed) is retained by the solicitor to appear in court, except in the minor courts where the solicitor may himself appear. In the case of private bills a solicitor prepares the case and may present it before the committee except in certain cases where the presentation of the case must be handled by a barrister.

[2] There are, in all, no fewer than six classes of orders, viz.:

(1) orders made by a central department which become effective when made and do not require any reference to parliament, (2) orders which become effective when made but have to be laid before parliament; (3) orders which have to be laid before both Houses for forty days before they become effective, during which time, of course, they may be objected to in either House, (4) orders which do not become effective unless confirmed by resolution of both Houses; (5) orders which may become effective unless some authorized outside body objects, in which case they become provisional orders; and, finally, (6) orders which are provisional in every case, objection or no objection, and do not become effective until they have been embodied in a Provisional Orders Confirmation Act and passed by parliament.

by the issue of municipal bonds goes to the ministry of health. The ministry, through its administrative officers, thereupon inquires into the merits of the application, and if it decides that the permission ought to be granted, an order is issued conferring the desired power. This order, as has been said, may be a provisional order, in which case it requires for its validity the subsequent ratification of parliament. The usual practice is to lump several provisional orders into a confirmation bill, and in that form they are presented for enactment into law. It is less expensive to obtain authority in this way than by introducing a private bill, hence the practice of applying for "orders" has been increasingly popular in recent years.[1]

HOW IT OPERATES.

It has sometimes been suggested that Congress, and the state legislatures as well, might unburden themselves in this way from the great pressure now placed upon them. They might authorize the various executive departments (such as the department of commerce in the national government, or the department of education, or of public utilities in the state governments) to issue provisional orders which would have the force of law when confirmed by legislative enactments. But the American scheme of government by checks and balances does not lend itself readily to any such procedure. In Great Britain an executive department, being assured that there is a legislative majority behind it, can always count upon the confirmation of its acts. In the United States there would be no assurance of such confirmation. The majority in Congress, or in a state legislature, is sometimes hostile to the executive; and even when the two branches of government represent the same political party they do not always work in coöperation. Certainty of confirmation (save in very exceptional instances) is the feature which makes the English plan workable and no such certainty could be hoped for in America. To some extent in recent years, however, American legislatures have been giving to various administrative authorities and boards the right to issue orders having virtually the force of law—without the necessity of confirmation. The order-issuing powers given to the interstate commerce commission and to public utilities commissions in the various states are good examples.

THE PLAN WOULD NOT BE PRACTICABLE IN THE UNITED STATES.

With this general explanation of the various steps through which

[1] In addition to the granting of orders the various central departments give authorizations dealing with matters of routine in a less formal way.

BRITISH AND AMERICAN PROCEDURE COMPARED:

1. THE ABSENCE OF PROVISION FOR FORMAL EXECUTIVE LEADERSHIP IN AMERICA.

a bill passes on its way through the House of Commons—five ste in all [1]—it is now possible to compare the essential fe tures of English and American legislative procedu Fundamentally they are alike, although there a some differences between the two. In Congress, as h been said, there is no broad distinction among bills. All of them a public bills introduced by private members. It is true, of course, th some measures are inspired by the President or members of his cabinet. Many notable illustratio of this have been afforded during President Frankl Roosevelt's administration—for example, the N tional Recovery Act, the Agricultural Adjustme Act, the Social Security Act, and so on.[2] But measu are never formally laid before Congress by a member of the Pre dent's cabinet or in the name of his administration. To introduce measure in this way would be quite out of keeping with the trac tions of Congress and would be resented by the members. It is n so in the House of Commons, for there the members of the majori party are faced with the simple fact that a vote against any gover ment measure is a vote to turn their own ministers out of power a put their opponents in. This makes them far more amenable to t crack of the party whip. The American congressman, when he vo against some measure which the administration is known to suppo realizes full well that nothing catastrophic will happen. His pa will not go out of power, if it is in power; it will continue in off to the end of its prescribed term, even though it were turned do by the House of Representatives on one measure after another. T defeat of the Supreme Court reorganization measure by Congre if it had taken place in parliament, would have turned the existi government out of office.

2. INTRODUCTION OF PUBLIC MEASURES.

Any member in either chamber of Congress may introduce a bill, save that money bills must originate in the House of Represen tives. But measures of comprehensive scope and gre importance, including those which correspond to go ernment measures in Great Britain, are usually la before Congress by the chairman of the committee which such bills would naturally be referred, and hence beco

[1] To wit: introduction and first reading, second reading, committee conside tion, report stage, and third reading.

[2] Some of them were later held to be unconstitutional.

designated by the chairman's name. That is why we speak of the Sherman Law, the Mann Act, the Rogers Act, the Harrison Law, the Cable Act, the Bankhead Cotton Act, the Wagner Labor Act, and so forth. A measure for the further regulation of the railroads would ordinarily be brought in by the chairman of the committee on interstate commerce, while a proposal to provide federal subsidies for elementary education would be introduced by the chairman of the committee on education. In a limited sense, therefore, the chairmen of committees in Congress assume the functions of initiative and guidance which members of the ministry are accustomed to exercise in parliament. Although they are not heads of administrative departments they are usually in close touch with the departments concerned, and are provided with all the data they may require. Expert draftsmen are also used by Congress in the preparation of measures although not to the same extent as in England.

3. A DIFFERENCE IN COMMITTEE WORK.

In Congress, again, all bills are referred to committees before there is any discussion of their principles or general merits. In one respect this is an advantage, in another a defect. It gives the committees more freedom in overhauling a bill and changing its substance. On the other hand, it means that a committee must do its work without having first ascertained the attitude of the House toward the measure as a whole. Hence it sometimes happens that congressional committeemen will spend several weeks in perfecting the details of a bill which is then rejected by the whole House on its general lack of merits. The excellence of the work done by the English parliamentary committees is due, in part at least, to a feeling of reasonable certainty that their labor will not be in vain. For they work on no public bill until after the House has accepted it in principle.

4. CHAIRMEN OF COMMITTEES IN THE TWO COUNTRIES COMPARED.

The chairmen of committees in the House of Commons, on the other hand, do not obtain the prominence or the publicity that is given to the chairmen of important committees at Washington. They do not figure so prominently in the debates. On the floor of the House they are quite overshadowed by the ministers who take personal charge of all government measures. Their names are not tacked to bills and displayed in the newspaper headlines. There is still another difference: the chairman of a parliamentary committee (like the speaker of the House) is deemed to be impartial. He presides, and maintains decorum in his committee room, but he

does not take sides. The chairman of a congressional committee has no such inhibition. He is a power in his committee and often dominates it. He has no hesitation in working openly in behalf of a measure which his committee is considering, or in working openly against it. Finally, there is a lively competition for places on the more important committees at Washington; at Westminster there is very little.

5. THE SYSTEM OF QUESTIONING THE MINISTERS.

The use of the "question hour" in the House of Commons points to still another important procedural difference. When a congressman desires information from one of the executive departments in Washington he telephones or writes for it, and if he does not obtain it in that way he may offer a resolution requesting that it be brought in. But he is not allowed to consume the time of the whole House in pelting questions at the administration. The administration in Washington cannot be questioned on the floor, for nobody officially represents it there. Some chairman of a committee or some other congressman may constitute himself a spokesman for the President and may rise in his defense when an attack is made; but he does so in an unofficial capacity. In parliament, as has been pointed out, there is a regular time for asking questions and for answering them from the floor.

6. YIELDING THE FLOOR.

There are two practices in the American House of Representatives which the House of Commons has thus far avoided. One is the custom of requesting a member to yield the floor when he is in the middle of his speech. This is done at almost every sitting in Washington, and although the member who has the floor may decline to yield it he usually complies as a matter of courtesy. In this way the debate is sometimes turned into a personal fracas. This custom of yielding the floor is unknown in the House of Commons. In that body, when a member is on his feet he may be interrupted at times by cries of "Hear, hear" or "No, no" from the opposing benches, but other members do not cut in upon him until he is through The continuity of the debate is in this way preserved.

7. GRANTING LEAVE TO PRINT.

Then there is the "leave to print" arrangement. It has no place among the usages of parliament. The only way in which a member of the House of Commons can have a speech printed at the public expense is to deliver it. But in Congress many undelivered speeches are printed, session after session. A congressman speaks for five or ten minutes and then

moves that he be given leave to "extend his remarks" in print. Nobody objects, as a rule, for as a choice of evils it is preferable to let him print his speech rather than have to listen to it. In some cases a congressman obtains leave to print, in the *Congressional Record*, a speech no portion of which has been delivered at all. And sometimes the printed text of the undelivered speech is liberally interspersed with "Applause," "Laughter," etc. Copies are then struck off by the thousand and franked through the mails to voters in the congressman's district—to show them what an accomplished orator their representative is. The English voter has been spared this infliction.

PARTY RESPONSIBILITY AS A FEATURE IN THE TWO COUNTRIES.

Much has been written about the concentration of party responsibility in England and the fidelity with which party pledges are redeemed. A British political party, when it makes a promise to the people, is enabled by the organization and procedure of parliament to fulfill this promise. If it triumphs at the polls, it controls both the executive and legislative branches of government. The cabinet then proceeds to crystallize the party's promises into government measures with the assurance that they will be enacted into law. But in America the organization and procedure of the government does not so readily lend itself to the redemption of party pledges. Candidates for the presidency make all sorts of promises, express and implied, during the election campaign. But without the coöperation of Congress there is no way in which these promises can be carried out. Senators and representatives also make pledges, but unless the administration is ready to help in fulfilling them they go mostly unredeemed. The same is true in state government.

THE REDEMPTION OF PARTY PLEDGES.

Party programs are, therefore, a much less accurate forecast of future legislation in America than in England. Party pledges are more frequently disregarded here than there. English parliamentary procedure is based upon the principle that the dominant political party, through its majority in the House of Commons and under the leadership of the ministry, is definitely responsible for the fulfillment of its program. No checks and balances stand in its way. It cannot avoid or evade; it does not make excuses or blame the minority. That is the theory of lawmaking in England and the practice of it also.

But this system of lawmaking has the defects of its qualities. It is hard on the private member, especially on the "back-bencher"

who is not prominent in the councils of his party. His power to initiate legislation, although supposed to be unlimited except as respects money bills, is in reality very small. It amounts to much less than that of the individual congressman. He can bring in a private member's bill but his chances of getting it considered, much less of having it passed, are exceedingly slim. The standing orders, the traditions of the House, even the theory of ministerial responsibility are all against him. True enough, he may suggest amendments to government measures when they are in the committee stage, and a minister who desires to get his measures through will always do what he can to conciliate the back benches. Occasionally a private member, by reason of his special knowledge concerning the matter in hand, may become an influential factor on the floor; but such cases are exceptional.

SOME DEFECTS OF THE ENGLISH SYSTEM.

In a word the cabinet is responsible for initiating virtually all important measures and for steering them safely through both chambers. At every session it presents a sizable grist of bills and these have the right of way. There is very little time for anything else. If individual members get in the way the cabinet rolls over them with its loyal majority. It is one of the agreeable fictions of British government that the Commons controls the cabinet; but an assertion that the cabinet controls the Commons would come closer to the actualities. The cabinet with a majority behind it, according to Ramsay Muir, is a "dictatorship qualified by publicity." [1] This is perhaps too strong a statement, but in the process of lawmaking the power of the cabinet is very great.

A TOO-POWERFUL CABINET.

Both the House of Commons and the House of Representatives have devised ways of bringing a debate to a close and preventing obstruction by the minority. More than eighty years ago the House of Representatives adopted a rule that no congressman might speak for longer than one hour except by unanimous consent, and about the same time it was agreed to amend the rule relating to the previous question so that it might be used more effectively in shutting off debate.[2] A motion that "the previous question be now put" may be made by any congressman

LIMITATIONS ON DEBATE:

1. IN THE AMERICAN HOUSE OF REPRESENTATIVES.

[1] *How Britain is Governed* (3rd edition, London, 1935), p. 89.

[2] The "previous question" rule, in its original form, was first adopted by the House of Commons in 1604. It was put into the first set of rules adopted by the House of Representatives in 1789.

and if the motion prevails, with a quorum present, the vote on the main question must be taken at once. A motion that any matter be laid on the table is also in order, and with a few restrictions may be offered at any time. It must be voted on without debate, and when carried it tables not only the amendment under discussion but all other amendments and the main question as well.[1] A more common and less drastic method of shutting off discussion in the House of Representatives is by an advance agreement as to the time at which the debate shall be brought to a close. The committee on rules, after consulting the leaders on both sides, recommends a time limit and the House accepts it. Then, when the time limit is reached, the speaker brings down his gavel and the vote is taken.

2. IN THE HOUSE OF COMMONS.

Nearly all great legislative bodies, sooner or later, find it necessary to devise some means of defense against willful obstruction by filibustering minorities. More than three hundred years ago the House of Commons adopted a rule whereby a member might move that "the main question be now put," and this arrangement served well enough until the latter part of the nineteenth century. Then, during the early eighties, it did not prove strong enough to prevent the deliberate obstruction which marked the debates on Irish questions. On one occasion (1881) the House was held in continuous session for forty-one hours while the Irish Nationalists filibustered to prevent the introduction of a coercion bill. These tactics led to the ultimate adoption of the closure, as it is called. Under this arrangement a member may move the previous question at any time, even when another member is speaking. Unless the speaker decides that the taking of an immediate vote would be unfair to the minority, the motion must be put to a vote at once, without further amendment or debate. But even this did not put an end to obstruction where the clauses of a long bill were being taken up one by one in Committee of the Whole House. The previous question had to be invoked on every clause. So the House of Commons devised another weapon for handling obstruction.

THE CLOSURE.

CLOSURE BY COMPARTMENTS.

This is the process known as closure by compartments—which is the application of the previous question to a whole group of clauses in a bill. Somebody moves, for example, that clauses seventeen to twenty-three "stand part of the bill." Then, if the speaker approves, and a majority agrees,

[1] Robert Luce, *Legislative Procedure* (Boston, 1922), p. 276.

the debate on these clauses is at an end. A variation of this is known as the "kangaroo closure," an arrangement which permits the speaker and the chairman of the Committee of the Whole House in Ways and Means to select amendments for discussion out of those which appear on the order paper and to pass over the rest. The chairman of a standing committee does not have this power. In the hands of an impartial speaker or chairman this is a valuable arrangement for expediting business.

THE "KANGAROO CLOSURE."

By majority vote the House of Commons may also fix a time limit for the consideration of the various clauses of a bill. Then the guillotine falls at the expiration of the allotted period whether all the clauses have been discussed or not. But the guillotine is not frequently used. The practice now is to make a time-table whenever an important controversial measure comes up. The minister in charge of the bill then asks the House to approve a resolution allotting so many days to the second reading, to the committee stage, to the report stage, and so on. The time-table may even assign specified hours to individual clauses.

THE TIME-TABLE.

It will be noted, therefore, that although the nomenclature is different, the methods of expediting measures actually employed by these two great English-speaking legislatures are essentially alike. The closure, in all its forms, is a crude and arbitrary process which ought not to be used except as a last resort. Far better it is, as both Houses have learned, to agree in advance on an apportionment of time which will give both supporters and opponents a fair opportunity to be heard, which will ensure consideration of the important clauses in a bill, but which will none the less prevent undue delays or obstructionist tactics. Rules of procedure in legislative bodies exist for two purposes—first, to guard against hasty and ill-considered lawmaking; second, to expedite business. The difficult problem is to find rules that will achieve both these ends simultaneously.

CONCLUSION.

The use of time limits and time-tables has had one noticeable result at Washington and Westminster alike. It has brought the golden age of legislative oratory to an end. The days of Pitt and Fox, and Webster and Clay, seem gone forever. When only a few hours are available for the discussion of a bill, no member can monopolize the whole time for a set oration such as these old-time thunderers delivered in their day. The debater who desires to avoid unpopularity with his fellow mem-

THE DECLINE OF ORATORY.

bers, several of whom are sitting on tenterhooks awaiting their turn, must make his deliverance short and snappy. Hence it is said that while the seventeenth-century members quoted passages from the scriptures, and those of the next two centuries regaled the House with excerpts from the Greek and Latin classics, the twentieth-century M.P. "quotes from nothing at all and is quick about it." In Congress they give a prosy member leave to print; in the House of Commons they pursue the less expensive plan of flocking out of the chamber and leaving him to cast his pearls of rhetoric at the empty benches. Incidentally it is an unwritten rule of the Commons that a member may not read his speech from manuscript, although the use of notes is permitted.

DUE TO OTHER FACTORS THAN TIME LIMITS.

This is not to imply, however, that time limits and time-tables are alone responsible for the decline of parliamentary and congressional oratory. The decline had begun before these limitations came in. Long orations are not in accord with the spirit of the age in which we live. A speech of three or four hours' duration would clear the floor in the legislative halls of any country today. And the tension upon a speechmaker, who has to hold the attention of restless members for a prolonged discourse, has also become far greater than it used to be The longest speech in the House of Commons since the incoming of the twentieth century was Lloyd George's famous budget speech of 1909 It took him less than three hours to deliver, but he became exhausted before the end and the House accorded him the courtesy of adjournment for a short period in order that he might regain strength to finish it.

The whole tempo of life has been speeded up nowadays. People travel faster, talk faster, and think faster than they used to do They are more impatient of things that take time. Time was when Edward Gibbon could write five volumes on the *Decline and Fall of the Roman Empire* and get millions to read them; but the Roman empire would have to decline and fall in five pages nowadays in order to secure any such quota of readers. The age in which we live seems to be resentful of anything that does not come in concentrated form. So it insists that speechmakers provide themselves with terminal facilities.

In tones of regret some people talk of the decline of oratory, on both sides of the Atlantic. They tell us that eloquence has been laid to rest in the churchyards. But it may well be doubted whether there

is much reason to mourn its demise. Emerson once remarked that "the curse of this country is eloquent men." If legislators perorate less nowadays, it may be that they put more substance into their speeches. If there is less eloquence, there may be more wisdom: certainly there is more meaning to what the orators say. Many of the so-called classic orations embodied an astonishing paucity of ideas. They were a series of purple patches, of meaningless periods delivered with pontifical solemnity. Take down a volume of Gladstone's speeches, or of Daniel Webster's. You will wonder how such utterances could ever have stirred the souls of men. Both *Hansard* and the *Congressional Record* make dull reading nowadays, and very few people ever wade through their prosy pages; but they are as light literature compared to the volumes of "great orations" which cumber our library shelves. The world has grown tired of oral grandiloquence. *Pectus est quod disertos facit*,—as Quintilian says. It is the heart that makes men eloquent.

An excellent concise sketch of the process of lawmaking in parliament may be found in Frederic A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), chap. xvii.

The standard work on English parliamentary procedure is Sir Thomas Erskine May, *Parliamentary Practice*, a work which is now in its thirteenth edition (London, 1924) The *Standing Orders of the House of Commons* are included. Special mention should also be made of Josef Redlich's monumental study of the *Procedure of the House of Commons* (3 vols., London, 1908). Briefer outlines are Sir Courtenay Ilbert, *Parliament: Its History, Constitution and Practice* (London, 1911), the same author's *Mechanics of Lawmaking*, and his smaller *Manual of Procedure in the Public Business of the House of Commons* (London, 1908). A later book of much value is G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (London, 1929). Carl Wittke, *The History of English Parliamentary Privilege* (Columbus, Ohio, 1921) deals with an interesting phase of a somewhat related subject.

For analogies and contrasts, reference may be made to D. S. Alexander, *History and Procedure of the House of Representatives* (Boston, 1916), and Robert Luce, *Legislative Procedure* (Boston, 1922). In a smaller book entitled *Congress: an Explanation* (Cambridge, 1926) the same author deals with the committee system in Congress.

CHAPTER XIII

ODD WAYS AT WESTMINSTER

The House of Commons needs to be impressive, and impressive it is. The way to preserve old customs is to enjoy them.—*Walter Bagehot.*

The House of Commons is not only an impressive body, but picturesque also, which is because it retains so many ancient customs and curiosities of procedure. Most of these go back several centuries; their exact origin is sometimes so much in doubt that even the most diligent antiquarians have been unable to explain how they first came into existence. A few of them are clearly the heritage of mediaeval days when the House was made up of burgesses and knights of the shire. The political Philistines look upon some of these old customs as bric-a-brac which ought to be thrown away and replaced by things more up to date. But the evidences of age (which old customs are) give dignity and draw reverence. It is not surprising that the House of Commons, as the oldest representative chamber on earth, maintains an atmosphere more redolent of bygone centuries than that which surrounds the making of laws in any other country. Its glamor is not merely a "barbaric pomp," as Richard Cobden once called it.

SOME ANCIENT CUSTOMS AND SYMBOLS.

The oddest thing about the House of Commons is its meeting-place. This chamber is unique. Legislative halls in all other countries are so planned that every member can have a seat and can sit with his face to the presiding officer. But in the House of Commons there are benches for less than two thirds of the members. And those who occupy them do not face the speaker of the House; they face their opponents. New members sometimes do not realize that no individual seats are assigned and there are current stories of freshman commoners making early application to the clerk in the hope of getting well placed. A first glance around the chamber gives the impression of a chapel or huge choir stall. The subdued light which falls from overhead throws a mellowness over the place. There is an air of dignity,

A UNIQUE CHAMBER.

leisure, and comfort intermingled with venerableness—all in sha: contrast with the bustling auditorium where the American House Representatives semicircles around its speaker.

On the morning of the day when a new parliament assembles, quaint ceremony is gone through. In the early hours of this openi day a detachment of twelve yeomen of the guai from the Tower of London marches to Westminste These yeomen are colloquially known as "beefeaters which is said to be a corruption of the French *buffetier*. They com in the picturesque glory of their Tudor regalia, each carrying lighted lantern of the pattern of 1600. Accompanied by the lo great chamberlain, who is the custodian of the place, they trud through the legislative chambers and down into the rooms and ca erns below, into every corner of the stately pile. In and out amor the coal bins and furnaces, the gas pipes and the steam pipes, tl wine cellars and the rubbish rooms they go—every yeoman keepir step, his eyes to the front With their eyes to the front they are loo ing for kegs of gunpowder placed in some out-of-the-way corn by the enemies of the king!

SEARCHING THE HOUSE.

This ceremony of searching the Houses has been gone throug at the opening of every new parliament for more than three hundre years Back in the days of James I, a certain Gu Fawkes, a young Englishman who had served in th Spanish army, was hired by some conspirators blow up the old House of Parliament Fawkes succeeded in placir twenty kegs of gunpowder in the basement of the building, all car fully covered with kindling wood When parliament assemble with the king in attendance, the gunpowder was to be touched o But too many people were let into the secret; somebody told th authorities, and Fawkes was seized in the cellar (with the key i his pocket) on the morning of explosion day (November 5, 1605)

ORIGIN OF THIS PRACTICE.

Some time later it was ordained, as a precaution against th

[1] For more than two centuries after 1605 every fifth of November was cel brated as a public holiday in England, a day of rejoicing known as Guy Fawk Day Even yet it is an occasion of some festivity. There is a well-known ditt

Remember, remember, the fifth of November,
The gunpowder treason and plot,
For I know no good reason why the gunpowder treason
Should ever by us be forgot.

As for the key which was found on Fawkes, it is still on exhibition at Wes minster.

machinations of any future Fawkes, that the whole place should be searched at intervals, and to this day the quaint formality continues. Parliament has built itself a new abode since 1605, and there are now no unlighted caverns underneath. But the yeomen of the guard continue to make their rounds. Every inch of the building is now brilliantly lighted by electricity; but the "beefeaters" still carry their flickering lanterns. When they have searched through the miles of rooms and corridors they send a report to the royal palace that "All's well" and are then rewarded, as of yore, with a repast of cakes and ale, ending with a toast to the king.

PRAYERS.

The House opens its daily sittings with the entrance of the speaker's procession. That dignitary marches down the great aisle accompanied by the chaplain in surplice and stole, the sergeant-at-arms with his sword, and the mace-bearer with the mace. Then comes the reading of a psalm and a prayer by the chaplain It is always the 67th Psalm. . . . "Oh, let the nations be glad and sing for joy, for Thou shalt judge the people righteously and govern the nations upon earth. . . . Then shall the earth yield her increase, and God, even our own God, shall bless us."

As a rule there are very few members in the chamber when these prayers are being read, and visitors are not allowed in the galleries until after the chaplain has finished. This rule, no doubt, was born in the days when religious bitterness was rife—when the reading of prayers from a prayer book might have been made the occasion of disorders on the part of Nonconformists. Members of the House face the center aisle during the reading of the psalm and then turn their faces to the wall when the prayer is being read. The origin of this curious custom nobody seems to know.[1] During prayers, by the way, the Treasury bench is always empty. It is not that members of the cabinet have less need for the chaplain's intercession than the rank and file of the Commons, but merely that they do not need to come early in order to reserve their seats.[2]

THE MACE.

Prayers being over, the doorkeeper shouts "Mr. Speaker at the Chair." The cry is taken up through the lobbies and corridors, thus warning the loitering members that the day's sitting has begun. The mace is in full view on the

[1] It has been suggested to me by one excellent authority on the usages of the House that in the old days the members probably knelt at their benches during prayers and that the practice of turning their backs to the chaplain may have originated in this way.

[2] Michael MacDonagh, *The Pageant of Parliament*, Vol. I, p. 236.

table just below the speaker. This indicates that the House is sitting as a House, not in Committee of the Whole House. When the House goes into committee the sergeant-at-arms takes the mace reverently from the table and sets it underneath, out of sight. When the House adjourns it is carried off with the outgoing speaker's procession. This mace, which figures so prominently in House procedure, is a wooden staff about five feet long, finely embellished in gold leaf and surmounted by a gilded crown.

ITS HISTORY IN ENGLAND.

The use of the mace goes back to early mediaeval days when the king attended parliament in person. Originally, as we have seen, it was his custom to be present at meetings of his Great Council, and later at meetings of the *parlementum*. When parliament divided into two Houses, the king attended sessions of the House of Lords only. If he had anything to say to the House of Commons he summoned the commoners to the House of Lords, as he still does at the opening of a new parliament. Then he instructed them to go to their own chamber and deliberate upon the matters which were within their province, especially the granting of money. But not having the royal presence with them, in their own chamber, the commoners appear to have desired some symbol of it, some token of the fact that they were meeting by virtue of the royal command and under the king's protection. So this mechanical contrivance was devised at an uncertain date, a wooden staff with a crown on its head, and it became known as the mace. No business is in order until the mace has been placed on the table where it silently reposes till the House goes into Committee of the Whole or adjourns.

A CROMWELLIAN EPISODE.

There it has lain for at least five hundred years. Were it able to write an autobiography it could tell a long and chequered tale. *Quorum pars fui*—it might say, for on one occasion the mace was itself expelled from the House. This was in 1653, when Oliver Cromwell became exasperated at the action of parliament in trying to prolong its own existence. With a squad of soldiers he hurried to Westminster and ordered the members out of doors. Then his eye caught sight of the mace on the table. "Take away that bauble!" he bellowed, and the mace disappeared. But it was soon brought back again.

Perhaps it may be of interest to mention that the colonial assemblies of America, following the custom of the House of Commons, each provided itself with a mace, and the usage is still continued

both by Congress and the state legislatures. In the American House of Representatives the mace is a plain staff surmounted by the figure of an eagle. It is not laid on the clerk's table but stands on a marble pedestal at the right hand of the speaker. When the House goes into Committee of the Whole it is removed from this pedestal, out of view; when the House adjourns it is taken away by the sergeant-at-arms. The mace, in the House of Representatives, is said to be the "symbol of authority," but how many congressmen know how and why this symbolism originated?

THE MACE IN CONGRESS.

The table which is used by the clerks in the House of Commons and on which the mace reposes, is a massive piece of furniture occupying most of the space between the Treasury and Opposition benches. These two benches, as has been said, face each other from opposite sides of the main aisle, one at the speaker's right and the other at his left. On the table are piles of books and documents which the ministers and their opponents utilize in the course of their speeches. On it, also, are two brass-bound boxes, one at either side. It is the practice of those who sit on the Treasury or Opposition benches to use these boxes as their pulpits. They often set their notes thereon, and thump their fists on the oak receptacles to emphasize the salient points in their utterances. Mr. Gladstone, in the course of his long career as prime minister and as leader of the opposition, punished both of these boxes so severely that the dents made by his signet ring are there to this day, bearing tribute to the vigor with which the great commoner drove home his arguments.

THE TABLE.

The Treasury bench, on the speaker's right, is occupied exclusively by those members of the ministry who are members of the House. If the number present exceeds the capacity of the bench, the senior ministers occupy it and the junior ministers find seats elsewhere on the government side of the main aisle. But so long as there is room on the Treasury bench, the occupant of any ministerial post, however subordinate, has the right to a place on it, provided, of course, that he is a member of the House of Commons, which some ministers are not.[1] By an old parliamentary custom, moreover, the two members for the

THE TREASURY BENCH.

[1] That is, some of them are members of the House of Lords. Ministers are not permitted, as in France, to sit or speak in the chamber to which they do not belong. See Chapter XXIV.

City of London are entitled to sit on this bench, but they never do it (unless they happen to be ministers) except on the first day of a new parliament. On that day they invariably sit there a few moments for the purpose of asserting their ancient right to do so,—and this even though they happen to be members of the opposition.

The Opposition bench is of equal capacity, but usage does not precisely define who shall occupy it. In general, however, this bench is reserved for the leading members of the opposition—which is a rather elastic limitation. As a matter of practice the leader of the opposition virtually determines who shall sit alongside him on this bench, for no one would venture to go there uninvited. Some of his chief lieutenants are always on hand; others go to the Opposition bench when their presence is desired for consultation during a particular debate. Younger members, of course, deem it an honor to receive such an invitation.

THE OPPOSITION BENCH.

Apart from the honor involved, there is a certain advantage in sitting on one of these benches and in addressing the House from the head of the aisle. For one thing it is the only place where a speaker has something to lean upon. And rather curiously there is no other place in the House of Commons where a member can stand and speak face to face with most of his fellow members. Even at these front benches his back will be turned to some of his audience. Of course if he should go to the top back bench on either side he would then have the entire membership of the House in sight; but half the members would have their backs turned to him. Fortunately the acoustic properties of the House are so good that a speaker can easily be heard no matter where he stands.

On the same level as the floor of the House, and to the right of the speaker's chair, there is a small gallery or enclosure. It is irreverently known as "the official pew." Here sit various permanent officials (not members of the House) who may be wanted by ministers during the debate. When some troublesome point is raised by an opposition speaker, the minister steps over to this enclosure and secures material for his reply. It is this practice that has given weight to the cynical assertion that the ministers are merely the spokesmen of their professional subordinates and that the House of Commons is merely a hall of echoes for the sayings of clerks and secretaries.

THE OFFICIAL PEW.

Some eccentricities of procedure are associated with hats in the

House. Visitors to the Commons are often surprised to see members sitting with their hats on. The practice of wearing hats in the House of Commons is said to be a survival from the days when barons and knights came to parliament in full armor, with helmets of steel that could not be removed. In all probability, however, the custom of hat-wearing had a less chivalrous origin, for members of the House of Lords do not habitually wear their hats during debates, although they are even more directly the descendants of the mediaeval ironclads. The reason why the commoners wear their hats, while the lords do not, is probably because the House of Commons has never been provided with a convenient coatroom.[1] At any rate, the earliest engravings of parliament show the members wearing caps and gowns; then in the seventeenth century they appear without the caps but with flowing capes and swords; in the eighteenth century they wore elaborate wigs for headgear, and it was not until the nineteenth that the hats appeared.[2]

THE HAT IN THE HOUSE.

But hat-wearing in the House of Commons is quietly on the wane. The practice is now confined, for the most part, to the relatively few members who wear silk hats (or "toppers" as Englishmen call them), and this glossy headgear is rapidly going out of use. On the other hand the custom of wearing hats in the House of Lords seems to be more common today than it used to be. Sir Henry Lucy, not many years ago, spoke of it as "quite exceptional," but at the present time the visitor to the galleries will see as many hats on the heads of lords as on those of commoners [3]

AN OLD CUSTOM ON THE WANE.

The etiquette which governs the hat in the House of Commons is well established and rigidly enforced. A member may wear his hat until he rises to speak or until he moves from one seat to another. Then he must uncover. (This rule has been waived for women members.) Even if he leans forward to whisper in the ear of the member in front of him he must remove his hat. The lifting of the hat is also used as

HEADGEAR AND ETIQUETTE.

[1] The present coatroom of the Commons is located a considerable distance from the chamber and hence is inconvenient to use. The lords, on the other hand, not only have a "robing-room" but there are liveried messengers in attendance to take and fetch their belongings.

[2] See the reproductions in A F. Pollard, *The Evolution of Parliament* (new edition, London, 1926).

[3] Sir Henry Lucy, *Lords and Commoners*, p. 99.

a signal to the presiding officer. It is in this way, for example, that the minister or member who is in charge of a bill moves its advancement to the next stage. When the debate seems to have died down, the speaker looks toward the minister who is in charge of the measure. The latter does not rise or speak a word; he merely lifts his hat and the speaker puts the question. The speaker also carries a three-cornered contrivance which is called a hat. He brings it with him into the House, sets it on the arm of his chair, and picks it up when he leaves. It is manifestly part of his official uniform, but it never goes on his head.[1]

HOW SEATS ARE RESERVED.

It is an unwritten rule of the House that a member (other than one who sits on the front benches) may reserve any unoccupied seat by placing his hat on it. If, therefore, a private member goes out to the lobby, the library, the smoking room, the restaurant, or the terrace, he merely drops his hat on the bench where he has been sitting and departs with the assurance that he will find the place unoccupied when he returns. Due to the relatively small attendance when routine business is under consideration, there is not much occasion for members to reserve seats in this way; but on the opening day of a new session or when an important debate is scheduled, the quest for seats becomes lively. So a good many members (especially new members) go to the chamber some hours before the sitting begins and reserve seats for themselves by depositing their headgear in favorable locations. Those who do not take this precaution may have to find seats in the lower gallery (which is reserved as an overflow place for members) or may even have to stand during the proceedings.

AN EPISODE OF IRISH FLAVOR.

This method of reserving seats has had its humors. Some years ago, when the Irish Nationalists were in the House, one of their number conceived the idea of reserving enough seats for the entire membership of his party, nearly a hundred in all. So in the gray dawn of the day on which a new parliament opened, he came to the House with a huge armful of hats and caps of varying sizes, shapes, and ages. One by one he deposited them at suitable intervals on the best benches of the chamber and when the House assembled he passed the word to his fellow Nationalists that all the good seats were

[1] The lord chancellor, who presides in the House of Lords, has a similar "hat" but he wears it atop his wig on certain formal occasions.

theirs for the taking. But the Tory members did not appreciate the humor of this proceeding. They protested against such trifling with an ancient tradition. Whereupon the House ordered an investigation of the whole question of reserving seats, and it was finally agreed that for the future a seat should be reservable only by the use of a member's own hat, and not by using what is termed in theatrical parlance, a "property hat." Under the new regulations, moreover, a member may now reserve a seat by leaving his card on it.

The usage of the House is friendly to hats but unfriendly to swords. No member (with one exception) may bring into the House a sword, or anything that looks like a sword, not even a drawing-room rapier such as the sergeant-at-arms girds to his belt. This prohibition recalls the days when the gentlemen of England wore swords that were sharp. During a heated debate it was not uncommon for a quick-tempered knight to reach a hand to his sword-hilt.[1] His opponent across the aisle would sometimes meet the threat by doing likewise. There are several recorded instances of members drawing sabers and starting for each other, while friends on both sides intervened to avert a duel. So the House, in one of its irritable moments, decreed that a line be drawn, a thin red line, on the matting of the center aisle, about twenty-four inches from the lower benches on either side. Then it ordered that no member, in addressing the House, should step over this line.

THE WEARING OF SWORDS.

This diminished the danger of jousts in the chamber, but members might still settle their differences by a duel in the lobby, so the House eventually forbade the wearing of swords altogether. So strict is the prohibition that when distinguished military or naval officers come to the Houses of Parliament they must unbuckle their weapons and leave them with the doorkeepers. The only exception to the rule is made in the case of the two members who move and second the address in reply to the speech from the throne.[2] In accordance with a custom that goes back to time immemorial, these two members may appear in court uniform, with swords and scabbards, but only for the day upon which the moving and seconding is done. And the knightly para-

EXCEPTIONS TO THE RULE.

[1] The custom of wearing swords in the House continued until nearly the close of the eighteenth century.

[2] The sergeant-at-arms wears a sword, of course, but he is not a member of the House and his chair is technically outside the chamber.

phernalia, even on this one occasion, sometimes becomes an embarrassing adjunct to their carefully-prepared speeches, by getting entangled with shaky legs at critical moments.[1]

THE BAR OF THE HOUSE.

Just inside the swing-doors which guard the main entrance to the chamber is a sliding brass rail which can be used to close the center aisle. This is the "bar of the House" which figures so frequently in the annals of parliament. When the House orders anyone before it, he is escorted to this bar by the sergeant-at-arms or his deputy, and on many occasions some hapless offender against the dignity or privileges of the House has been haled there for judgment. In former days the prisoner at the bar was compelled to kneel while the speaker solemnly pronounced the censure of the House or even sentenced him to imprisonment. But in 1772 the custom of requiring prisoners to kneel was discontinued by an order which provided that future offenders should receive the speaker's judgment standing.[2] Imprisonment has not been meted out by Mr. Speaker to anyone, member or non-member, for many years. The last occasion was in 1880 when Charles Bradlaugh, an atheist member-elect, raised a ruction because he was not permitted to take the oath of allegiance in his own way In the Clock Tower there are still some detention rooms for the confinement of those whom the speaker penalizes.

PRISONERS AT THE BAR.

OTHERS WHO HAVE APPEARED THERE.

But it is not offenders alone who come to the bar of the House Men of all ranks and reputations have stood there at various times to be questioned by the House, or to make statements, or to plead causes, and indeed on some occasions to receive the thanks of the House for their services to the nation. The gossipy Pepys, as readers of the *Diary* will recall, once came to the bar and successfully defended his administration of the admiralty. The Duke of Wellington was summoned to the bar in 1814 that he might receive the thanks of the House for his services in the Peninsular Campaign. And fourteen years later, Daniel O'Connell came there to plead for Catholic

[1] Sir Henry Lucy, *Lords and Commoners* (London, 1921), p 97.

[2] The immediate occasion for the change, according to one authority, was the action of a certain journalist who was brought to the bar in 1771 for having published a report of the House proceedings On rising from his knees, after being duly reprimanded by Mr. Speaker, this unabashed offender brushed the dust from his trousers and exclaimed, "What a damned dirty House!" The members did not know whether to be angry or amused.

Emancipation. Many other historic examples might be given. Technically, the bar is outside the House and hence beyond the scope of the rule that no one who is not a member may utter a word within the sacred precincts. The American custom of inviting distinguished visitors to address the legislature from the speaker's dais has no counterpart in England.

THE GANGWAY.

Another term which figures in the parlance of the House is the gangway. It is a passageway running at right angles to the center aisle. Reference is commonly made, therefore, to "the benches below the gangway," or "above the gangway." There is no rule governing where members shall sit (except on the two front benches), but the tendency is for the younger members to find seats below the gangway. This location, in any event, affords a better vantage-ground from which to assail the ministers. During the times that the Labor ministry has been in office, the Conservatives took the opposition side of the House above the gangway, while the Liberals sat below it. The Irish Nationalist members, in the old days, always sat below the gangway on the opposition side,—no matter which of the two parties was in power It is a tradition of the House that these benches below the gangway can be counted upon to furnish trouble if a minister goes looking for it.

THE NOISY SECTION OF THE HOUSE.

But in recent years the back benches have hardly lived up to this tradition. Some of the Labor members, especially the "wild men from the Clyde," supply noise and interruptions enough; but they have hardly atoned for the withdrawal of that lively delegation which came from the green regions between Cavan and Cork. For more than half a century prior to the World War these Irish members flooded the chamber with their piquant individuality. They provided much of the eloquence, most of the humor, and all of the disorder Their quickness of wit atoned for their lack of gentility. One day an absent-minded member, on finishing his speech, sat down on his tall silk hat and crushed it flat as a doormat. Whereupon an Irishman, from below the gangway, arose and gravely said: "Mr. Speaker, permit me to congratulate the honorable member that when he sat on his hat his head was not in it." A long-winded member, goaded by flippant interruptions, once undertook to admonish the House. "I am not speaking to you," he said, "I am speaking to posterity." "Hurry up," bawled an Irish member, "or you will

soon have your audience in front of you." Not all the humor flown from the House even yet, but a goodly portion of it went the signing of the Irish treaty.

When the House of Commons proceeds to take a record vo is not the practice to call the roll as in the American Hous Representatives. A "division" is ordered by speaker, and the House divides in a literal se Adjoining the chamber, with entrances from vestibule, are two rooms known as division lobbies. When the c tion is put, the members are herded into these lobbies. Those vc *Aye* go to the right; those voting *No* to the left. Meanwhile, ele bells begin to tinkle in the reading room, smoking room, restaur and elsewhere, warning members that a vote is being taken. minutes are allowed before the lobby doors are closed. Then members in each of the lobbies pass before a little desk and h their votes recorded. Ordinarily the process does not take lor about ten minutes or so. A roll call in the House of Representat consumes nearly four times as long.

THE DIVISION LOBBIES.

The marshals of the House are the party whips. It is they steer the members into the division lobbies and make sure tha stragglers are rounded up. Each political p has two chief whips, senior and junior, besides sev assistant whips. The chief whip of the minist party must make sure that a majority is within call at a mome notice, for a defeat in the division lobbies may spell irretriev. disaster to the ministry. The chief opposition whip, similarly, ploys all his ingenuity to catch the other side napping. Both t functionaries must be vigilant, resourceful, good tempered, and t ful They must be constantly in attendance, no matter how dr the debate becomes, for the House may divide at an unexpe moment. It was Disraeli, I think, who once said that the funct of a chief ministerial whip were "to make a House, to keep a Ho and to cheer the ministers." The description holds good toda

WHIPS AND THEIR DUTIES.

Members of all parties are under obligation to let their w know where they can be found in case a hurry call has to be out. And if an important division is impend each member is in duty bound to get himself pai The pairing is arranged by the rival whips. E has his list of absent members who have declared their desire to *Aye* or *No*. These members are then paired off, one against anot

PAIRS AND PAIRING.

so far as they will go. The chief whip on the ministerial side holds the titular office of parliamentary secretary to the treasury and draws a salary as such, but he has no duties connected with the treasury. The three junior or assistant ministerial whips also have sinecure positions on the treasury pay roll. They are rated as junior lords of the treasury. The opposition whips get no emolument but only honor—and the hope of a salary when their party comes into power.

PRESENTING PETITIONS.

Among the present-day functions of the House, the oldest is that of receiving and presenting petitions. Originally the Commons received petitions from the people and presented them to the king. The latter decided whether the petitions should be granted. The petitions still keep coming in, although not in such large numbers, and they no longer go to the crown for consideration. A few petitions are presented at almost every sitting of the House by members whose constituents have prepared them. But they are not read to the House. The member who presents a petition on behalf of his constituents merely indicates its nature and tells how many signatures there are to it. Thereupon the speaker directs him to drop the document into a sack which hangs to the left of the chair. At intervals the contents are carried to the committee on petitions, which is supposed to examine them carefully—but never does.

WHAT BECOMES OF THEM.

When a petition goes into the sack, that is the last of it. "As well might it be dropped over the terrace into the Thames."[1] Monster petitions come to the House at times, petitions bearing signatures by the hundreds of thousands. They are carried down the aisle by attendants who deposit them at the foot of the clerk's table. Sometimes they are too big for the sack, in which case, after being formally presented, they are carried out again. The whole thing is nothing but a gesture, the shadow of what was once a reality. Petitions play a small part in the House procedure of today, but the tradition of their ancient importance is kept alive by the rule which gives the filing of petitions a priority over all other business in the House, no matter how urgent.

HOW THE HOUSE APPLAUDS.

There is no clapping of hands in the House of Commons. Applause is not given in that way. When a member desires to show his approval of something that has been said, he cries "Hear! hear!" Others may join in the chorus until it assumes the proportions of a babel. But these ex-

[1] Sir Henry Lucy, *Lords and Commoners* (London, 1921), p. 106.

clamations do not invariably express sentiments of approval. By an appropriate modulation of the voice the words may be made to throw ridicule on what a speaker has said. "The present government has done much for the worker," asserts a minister. "Hear, hear! Hear, hear!" comes the ironical ejaculation from the Labor benches—which means that the members of that party do not believe a word of it. Interjected at just the right moment, these words are often used to puncture a swelling bubble of eloquence. The House uses other forms of vocal interruption. Groups of members join in shouting, "Order, order!" or "Retract, retract!" "Division, division!" "Resign, resign!" and so on. Sometimes, in the attempt to howl down a speaker, they keep it up until the House is in a turmoil.

"NAMING" A MEMBER.

The speaker of the House, in his endeavor to restore order, does not pound a gavel. He has no gavel. His only weapon is his voice. Above the commotion, he rises from his chair, puts out his hand and quietly commands the honorable gentlemen to be in order. He is usually obeyed. No member is allowed to be on his feet when the speaker is standing. Disraeli once said that in his day "even the rustle of the speaker's robe" was enough to check an incipient riot. But it has not been so on all occasions Sometimes a speaker has had to expostulate rather vigorously. He may call upon a member to retract the unparliamentary expression which has caused the hubbub, or to apologize for some disparaging reference to a fellow member. In the event of a refusal he may order the offending member to leave the House, or in an aggravated case he may "name him"[1] When the speaker names a member his action is always followed by a motion to suspend the latter from the service of the House This motion is put without debate and is invariably adopted. The

[1] When addressing a member, in the ordinary course of debate, the speaker does not call him by name. Nor is any member designated in that way by his fellow members. It is always "the Honorable Member for So-and-So," or if he be a privy councillor he is referred to as "the Right Honorable Member." Members who belong to the army or the navy are always alluded to as "the Honorable and Gallant Member." lawyers as "the Honorable and Learned Member." A member with a courtesy title (see p. 134, *note*) is referred to as "the Noble Lord," or, in the case of a lady of rank (e g., Lady Astor or the Duchess of Atholl) as "the Noble Lady" A member refers to one of his own party as "my Honorable Friend," to a member of another party as "the Honorable Member." The speaker addresses and refers to members in this same way except that he makes no distinction as to party affiliations. When he names a member for disciplinary purposes he says "I name Mr. So-and-So to the House"

suspension, unless rescinded, is for the balance of the session.

Although there are galleries for visitors the theory still persists that the debates of the House of Commons are secret. Visitors are merely tolerated; their right to be present at any time is not recognized by the rules of the House. This is shown by the way in which the House proceeds to clear the galleries when it wants them cleared. No resolve to go into executive session is ever presented, as in the Senate of the United States. Some member of the House, usually the prime minister, merely draws the speaker's attention to the fact that strangers are present in violation of the rules. This ancient custom of "spying strangers" is a signal for the speaker to put the question "that strangers be ordered to withdraw," a question which is not open to debate. If the vote is in the affirmative the galleries are thereupon cleared, even the representatives of the press being ordered out. The last occasion upon which strangers were "spied" in the House was during the two-day session on proposals for compulsory recruiting (April 25–26, 1916). On this occasion not a soul was permitted within earshot except the members of the House, the clerk, and the sergeant-at-arms. But the clearing of the galleries, it ought to be added, takes place on rare occasions only; there have been only three of them during the past seventy years.

"SPYING STRANGERS."

Congress does most of its work in broad daylight; the House of Commons prefers the hours of darkness. It often sits late, sometimes very late. Occasionally it sits all night without adjourning. But its sittings ordinarily come to a close at midnight or thereabouts, whereupon the principal doorkeeper steps forth a pace or two into the lobby and in a strident voice calls out, "Who goes home?" Through the library, the smoking room, the side-corridors, and even along the terrace by the Thames, the cry resounds, "Who goes home?" Ministers and private members gather up their papers and drift down the center aisle through the swing-doors while the chorus of "Who goes home?" pours into their ears. Thus the Mother of Parliaments goes home.

HOW THE HOUSE ADJOURNS.

More clearly than anything else among the odd ways at Westminster this cry brings back the London of Pepys and Wren and Defoe. From Westminster to London in those days was a lonely jaunt and the way was not safe for travel by night. The streets of the intervening parishes were policed, to be sure,—but only by tippling constables who spent

A RELIC OF OLD LONDON.

most of their time in the alehouses. Thugs and roisterers roamed the poorly lighted roads, and did not hesitate to set upon lone wayfarers, whether in vehicle or afoot. So individual members of the House did not dare go home alone, and it became the practice to send squads of well-armed yeomen from the Tower to escort those who were ready to leave before the sitting adjourned. As each squad arrived, its commander notified the doorkeeper and he sounded the call, "Who goes home?" Those who were minded to go had the opportunity. Or, if they chose to remain a while longer, the call would be reiterated when the next squad from the Tower arrived. Westminster has now become engulfed in Greater London and there is no safer city anywhere, hence the practice of sending armed escorts has long since been abandoned. But the doorkeeper and his fellow attendants still do their vocal part, even as their predecessors did it three hundred years ago.

"THE USUAL TIME"

As a parting word to the members as they file out the doorway, the attendants keep shouting: "The usual time tomorrow, Sir"; "The usual time tomorrow." But why should the commoners need this reminder? Everybody knows that a quarter to three o'clock in the afternoon is the usual time, for it is fixed in the standing orders, and if perchance there were to be any departure from it, every morning paper in London would headline the fact. The members of today need no reminder as they leave the House, but there was a time in bygone centuries when they had neither standing orders nor newspapers to inform them. So the attendants assumed the admonitory function and no one has ever prevailed upon them to give it up.

MEMBERS OF THE HOUSE CANNOT RESIGN.

In the United States, when a member of the House of Representatives desires to resign, he merely hands his written resignation to the speaker. A writ may thereupon be issued by the governor of the appropriate state for a special election to fill the vacancy. But a member of the House of Commons is not permitted to resign in this direct and simple way. According to a rule which dates back to 1623, no member can resign his seat. Having been drafted for service by his constituents, he must continue as their representative until the existing parliament comes to an end. This rule, of course, is a heritage from the days when service in the House was regarded as a burden to be unloaded at the first opportunity. Today, although the privilege of serving in the House is eagerly sought by

Englishmen of all ranks, the old rule against resignations persists unaltered.

Yet there are practical considerations which make it desirable to relieve an individual member from further service when he insists upon it, and a roundabout way of doing this has been devised. It is provided by the Placemen Act of 1705. By the provisions of this act any member of the House who accepts an office of profit from the crown is forthwith disqualified from further service.[1] The intent of this statute was to safeguard the House against the virtual bribery of its members by the king, whose habit it was to bestow lucrative sinecures upon influential commoners, thereby making them subservient to the royal influence. They became placemen and pensioners of the king, ready to do his bidding in the House. But parliament became concerned at this impairment of its freedom and eventually decreed that the member who went on the royal pay roll would thereby vacate his seat.

HOW THIS OBSTACLE IS OVERCOME.

Now it happens that there is an ancient office in the gift of the crown, known as the stewardship of the Chiltern Hundreds. The Chiltern Hundreds are three parcels of land in Buckinghamshire. Once upon a time this land belonged to the king and a royal steward was in charge of it. But the estate has long since been converted into parks so that there is no longer anything for the king's steward to do. Nevertheless the office has not been abolished. It is kept in existence for the sole purpose of providing a means of exit from the House of Commons. When, therefore, a member desires to vacate his seat, he applies to the chancellor of the exchequer for appointment to this nominal post. The request is always granted; a warrant is issued appointing the member to be steward of the Chiltern Hundreds during His Majesty's pleasure, and notice of the appointment is duly inserted in the official gazette. The speaker thereupon takes cognizance of the fact that the member has disqualified himself by being appointed to an office of profit in the gift of the crown and accordingly declares him unseated.[2] This done, the newly appointed steward of the Chiltern Hundreds resigns and makes way for the next

THEY "TAKE THE CHILTERN HUNDREDS."

[1] For an amendment relating to members of the ministry, see p. 89.

[2] The warrant gives the appointee "all wages, fees, allowances and privileges" connected with the office. There are, in fact, no fees or emoluments of any sort—but that makes no difference.

member who desires freedom from service in the House. On a few occasions two appointments have been made and two resignations received within twenty-four hours.[1]

An odd circumlocution it may seem, and a superfluous one. From time to time some Englishmen have thought it so. More than a hundred and fifty years ago a distinguished statesman asked leave to bring in a bill enabling a member to vacate his seat by merely handing his resignation to Mr. Speaker, but the House resented the proposed innovation and by a decisive vote refused to allow even the introduction of the measure. Could one find a better illustration of that loyal adherence to ancient customs which is so characteristic of parliament? The House enjoys its old customs, and that is the way to preserve them.

HOW THE HOUSE ENDS ITS SESSION.

For centuries it was the custom of the king to prorogue parliament in person. With a glittering array he came in a royal coach to Westminster, mounted the throne in the House of Lords, summoned the commoners there, and read his speech to them. But nowadays parliament is usually prorogued by commission, and the procedure is always the same whether the prorogation is merely the close of a session or a prelude to the dissolution of parliament.[2] The crown appoints five lords commissioners (among them the lord chancellor is always included) to perform the duty. The commissioners, in scarlet robes, take their places on a bench in front of the great throne in the House of Lords. The faithful commoners are then summoned to the red chamber and the lord chancellor reads the king's speech to the assembled gathering. It is always a perfunctory deliverance, thanking parliament and announcing that the work for which the session was called has been completed. When the commoners have heard it they go back to their own chamber and make ready to leave.

There are no votes of thanks to everybody for everything, as in American legislatures. There are no speeches laden with an exchange of compliments. There is no presentation of a gold gavel or an

[1] But what if too many members should happen to want to leave the House at once? In that case there are some other sinecure appointments, notably the stewardship of the Manor of Chipstead, which can be utilized in addition to the Chiltern Hundreds. Occasionally a member has gone out of the House by this Chipstead route.

[2] At a prorogation which precedes a dissolution no announcement of this fact is ever formally made, even though every member knows it. The announcement is published a little later.

illuminated address. The speaker, rising from his place, walks backward down the wide aisle between the benches, bowing solemnly to his empty chair.[1] The sergeant-at-arms, with the mace on his shoulder, paces slowly after him. Ministers and members, forgetting their political animosities, gather in groups to say goodbye and to wish each other good luck in the coming election, for a general election always follows a dissolution. The cry of "Who goes home?" again resounds through the vaulted halls as the members pass the portals and are whirled away in the motors that stand chugging in line outside. Who goes home? Some of them have gone home to stay there, for the close of a parliament always marks the end of many political careers.

The odd ways and pageantry of the House are touched upon in many books such as Sir Henry Lucy, *Lords and Commoners* (London, 1921), A. Wright and P. Smith, *Parliament, Past and Present* (2 vols , London, 1902), H. Morrison and W. S. Abbott, *Parliament· What it is and How it Works* (London, 1934), H. Graham, *The Mother of Parliaments* (Boston, 1911), Michael MacDonagh, *The Pageant of Parliament* (2 vols , New York, 1921), E. Lummis, *The Speaker's Chair* (London, 1900), H. Snell, *Daily Life in Parliament* (London, 1930), and J Johnston, *Westminster Voices* (London, 1928)

[1] This odd custom is said to hark back to the time when the House met in St. Stephen's Chapel. In those days the speaker bowed toward the altar. The altar is there no more, but the bowing continues The members of the House, when they enter or leave the chamber during the regular sittings, also bow toward the speaker's chair.

CHAPTER XIV

PARLIAMENTARY FINANCE

This House will receive no petition for any sum relating to the public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by parliament, unless recommended from the crown.—*Standing Orders of the House of Commons*, No. 66.

IMPORTANCE OF MONEY BILLS.

It is a fundamental principle of sound public finance, generally recognized in all civilized countries, that no taxes shall be levied or expenditures authorized without specific action by the representatives of the people. This principle has had ostensible observance in England for many centuries, but it has only been strictly observed during the past two hundred and fifty years. Revenue and expenditure are by far the most important matters that come before legislative bodies, and there are very few important projects of lawmaking which do not, directly or indirectly, affect the interests of the taxpayer. "Who holds the purse holds the power" wrote James Madison in *The Federalist*. He was right. Having full power to tax and to spend, a government needs no other authority. It was through its control of the nation's purse that the House of Commons rose to supremacy. Hence it is not surprising that money bills should take up a large portion of the time which the House devotes to its work. They are regarded as sufficiently important to have a special procedure of their own.

BRITISH PROCEDURE:

1. THE TREASURY.

The pivotal point in British national finance is the institution known as the Treasury. It is the lineal descendant of the old Norman exchequer or revenue-bureau of the king. Ostensibly the British Treasury of today is officered by a board, the Treasury Board it is called, consisting of a first lord of the treasury (who is usually the prime minister), the chancellor of the exchequer, and several junior lords of the Treasury, all of whom are members of parliament and of the ministry. In addition there is a parliamentary secretary and a financial secretary who are also members of the ministry.

And, finally, there is a permanent secretary to the Treasury who is not a member of parliament, or of the ministry; but is the head of the civil service.

Now although the Treasury Board is constructed in this plural fashion it is not really a board at all. Its members never meet or perform any collegial functions.[1] The first lord, although he is titular head of the board, does not concern himself with its work unless some emergency arises. The junior lords and the parliamentary secretary are purely political officers. All the functions of the Treasury Board are performed in its name by the "second lord of the treasury." This official, who is better known as the chancellor of the exchequer, is a member of the cabinet and one of its most influential members. The financial secretary is his assistant in parliament and in administration. It is the chancellor's function to regulate the public income and expenditure, to propose changes in taxation, or any measures affecting the public debt, to pilot such measures through parliament, to prepare the annual budget, to collect the revenues, to keep the various public services supplied with funds, to control the currency, and to supervise the banks.[2] Surely a big enough task for any one minister! The Treasury provides the money for carrying on every branch of the administration, hence its actual head (the chancellor of the exchequer) must keep in touch with them all. And this keeping in touch has developed into a considerable measure of supervision over all the other governmental departments.

ITS ORGANIZATION.

The Treasury Board provides, therefore, a good illustration of the gap which so often intervenes between the nomenclature and the facts of British government. Nominally it is a board of five or six members, headed by a first lord who is usually the prime minister. But its functions have been wholly transferred to a single official, the chancellor of the exchequer, who, by the way, has now nothing to do with the exchequer at all.[3] He is secretary of the treasury, comptroller of

A CURIOUS ANOMALY.

[1] To this statement there is a single exception. The members meet on one occasion, when a new ministry is formed, for the purpose of "calling in," or appointing the various secretaries.

[2] Henry Higgs, *The Financial System of the United Kingdom* (London, 1914), p. 81 See also T. L. Heath, *The Treasury* (London, 1927), and R. G. Hawtrey, *The Exchequer and the Control of Expenditures* (London, 1921).

[3] The exchequer is the auditing department of British government. Its head is the comptroller and auditor-general, who is not a member of the ministry.

the currency and director of the budget all rolled into one. His office is the center around which the whole financial system of Great Britain revolves. But the chancellor acts always in the name of the Treasury Board and all his instructions to the various departments go out in the name of the "Commissioners of His Majesty's Treasury."

THE ESTIMATES

The initial step in the financial work of parliament is the compilation of the estimates. In the autumn of each year a circular is sent by the Treasury to the heads of all departments asking them to furnish figures concerning their probable requirements for the next fiscal year. Thereupon the financial officers in the various departments put their pens to paper and when their estimates are ready send them down to the Treasury. They must be made in a form prescribed, on uniform sheets, and in considerable detail. Likewise they must be accompanied by explanations of all increases over the estimates of the preceding fiscal year. All fixed charges, or charges upon the Consolidated Fund such as interest on the national debt, the civil list, the salaries of judges, pensions, and so on are not inserted in the estimates but are figured separately. More than one third of the entire national expenditures are in this category. As for the controllable expenditures there is a general understanding that if a department desires a substantial increase in funds for any of its activities, it will consult with the chancellor of the exchequer or with his subordinates in the Treasury before including the amount in its estimates. In this way the Treasury has something approaching a veto upon departmental increases even before the estimates are made ready for parliament. If a disagreement arises between the chancellor of the exchequer and the head of any department concerning a proposed increase the matter is referred to the prime minister, or to the whole cabinet for adjudication.

2. PREPARATION OF THE ESTIMATES.

When the estimates are all prepared, and are in the hands of the Treasury, the first step is to have them checked up with the figures of the preceding year. Numerous conferences then take place between officials of the Treasury and officials of the various departments with a view to getting reductions by mutual agreement. Meanwhile figures of probable revenues are prepared by the various departments to the best of their ability, and when the total estimates have been footed

3. CONFERENCES ON THE ESTIMATES.

up it is usually found that more money is asked for than can be provided by the existing taxes. Hence it becomes necessary to insist upon reductions of expenditure wherever this can be done with the least detriment to the public service, or else to find some new sources of revenue. The chancellor of the exchequer makes up his mind as to the wisest course and then lays the situation before the cabinet. The cabinet, after hearing his recommendations and after a full discussion of the various problems involved, authorizes the chancellor to lay his estimates and proposals before parliament, with such modifications as may have been agreed upon.

4. THE BUDGET SPEECH.

The estimates of expenditure, however, do not have to wait until all questions relating to the revenue are passed upon by the cabinet. They are presented to the House of Commons as soon as they have been approved, and preferably at the very opening of the session. A little later the chancellor of the exchequer makes an elaborate "budget speech" to the House in which he reviews the finances of the past, the revenue, the expenditure, the national debt, and the surplus or deficit. This review serves as a prelude to a more detailed statement of the financial program for the current year—particularly as regards new taxes, or increased taxes, or reduced taxes. A generation ago this budget speech was an all-day affair, but in recent years it has been much abridged and most of the figures that formerly rolled from the chancellor's tongue, hour after hour, are now given to the House in printed form. Gladstone, during his long parliamentary career, delivered the annual budget speech on thirteen occasions, sometimes reeling off his statistics for hours at a stretch.[1] He did it with a charm which one of his admirers characterized as "setting figures to music." The budget speech, it may be mentioned, is made to the House sitting in Committee of the Whole.

5. THE HOUSE "IN SUPPLY."

For several weeks the House devotes a large portion of its time to this financial program, approving the estimates and providing the funds. When debating the estimates it sits as a Committee of the Whole House "in Supply"; when providing funds it sits as a Committee of the Whole House "in Ways and Means." Hence the terms House in Supply and House in Ways and Means, as they are colloquially used. The estimates are presented in sections and each section is taken up in "votes" or groups of items. The financial secretary of the Treasury

[1] See S. Buxton, *Gladstone as Chancellor of the Exchequer* (London, 1901).

champions the civil estimates; the secretary of state for war is responsible for presenting the military estimates; the minister for air brings in the air force estimates; and the first lord of the admiralty presents the naval estimates. Thus the work on the floor is allotted to the men who know most about it. Amendments may be offered to strike out or to decrease any item; but no increases or new insertions can be proposed except by a member of the ministry, for a standing order of the House (quoted at the head of this chapter) stipulates that no proposal of expenditure can be considered unless it is made in the name of the crown, and only a minister has authority to speak in the crown's name. This means, as a matter of reality, that there is no chance of getting an appropriation for any purpose whatsoever unless the chancellor of the exchequer agrees to it. Rule No. 66 makes him as nearly a financial dictator as can be found in any country that maintains a system of representative government.

6 CHANGES MADE BY THE HOUSE.

Occasionally, however, if good reasons have been shown during the discussion, the minister in charge of the estimates (after consultation with the chancellor of the exchequer) will himself propose an increase or a new item, but in general the influence of the House is restricted to eliminations and reductions only.[1] In practice, moreover, the House accomplishes very little by way of revision downward, for when the ministers decline to accept a reduction they can summon a majority of the House to stand by them as a matter of confidence. On minor items the ministers sometimes give way for the sake of party happiness, but on important ones they stand their ground. The result is that the estimates go through with no drastic alterations and in a remarkably short space of time. The opposition concentrates its fire upon a relatively few "votes" and permits the rest to pass without debate.

The principal end achieved by these budget debates is not a reduction of proposed expenditures but a general airing of grievances and a wide-ranging review of administrative policy. If any member of the opposition is dissatisfied with some action of the home office, for example, he bides his time until the estimates for that department are reached. Then he moves a reduction in the minister's salary and uses this motion as a cover for his attack. But in any event the

[1] By a ruling of the speaker no motion may be made to reduce the amount of a grant-in-aid. For a discussion of grants-in-aid, see Sidney Webb, *Grants in Aid* (London, 1920).

debates in Supply (exclusive of those on the supplementary estimates) must be concluded in twenty days. All votes become subject to the closure at the expiration of this time limit.

When the estimates have all been voted by the House in Supply, and the various revenue proposals have been approved by the House in Ways and Means, the whole is then embodied in two bills, a finance bill and an appropriation bill. The former deals with new taxes or changes in the rates of old ones; the latter authorizes all expenditures that have been agreed upon. Both are thereupon put through the usual stages and passed by the House.

7. THE REVENUE AND APPROPRIATION BILLS.

After the House of Commons has finished with the finance and appropriation bills they are sent to the House of Lords, but the upper chamber has now no alternative but to pass them without amendment. This limitation, it will be recalled, was established by the Parliament Act of 1911. If the Lords receive a money bill at least one month before the end of the session, it goes forward for the royal assent and thereby becomes law irrespective of whether the Lords concur in it or not. The royal assent, of course, is a mere matter of form, and when it is given the appropriations become available to the various departments. Then the Treasury proceeds to raise the revenues that have been authorized.[1]

THE HOUSE OF LORDS HAS NO POWER TO AMEND OR REJECT SUCH BILLS.

But while all this estimating, debating, and assenting is going on money must be had to carry on the government. To meet this need the House of Commons passes various "votes on account," in other words it grants sufficient funds to carry the various departments along until the annual appropriations become available. These votes on account are lumped together in a bill which is enacted early in the session. This bill also provides a sufficient grant of money to cover any deficits that may have been incurred during the previous fiscal year.

VOTES ON ACCOUNT.

ENGLISH AND AMERICAN BUDGETARY PRACTICE

It will be noted from the foregoing outline that the British national budget is framed, presented, debated, and passed in two

[1] Increases in the rates of income taxes, or excises or customs duties, when proposed in the budget speech, go into force at once—before parliament has passed the finance bill and presented it for the royal assent. If for any reason the proposed rates do not go through, the additional taxes are refunded; but this very rarely occurs.

divisions, one dealing with expenditures and the other with revenue. But both divisions emanate from the same source, namely, the cabinet, and they are considered by the same body, that is, by the House of Commons sitting in each case as a Committee of the Whole House under two different names. The essential unity of the British financial system arises from the fact that the chancellor of the exchequer, with the aid of his fellow ministers, is responsible for preparing the entire budget, responsible for what it contains, and responsible for getting it adopted by parliament.[1] The concentration of financial responsibility is complete, which is not yet true of budget procedure in Congress despite the marked progress which has been made during recent years.

THE CENTRALIZATION OF RESPONSIBILITY FOR BRITISH NATIONAL FINANCE.

In the United States the estimates of expenditure are compiled by the director of the budget from figures submitted to him by the various departments. The director of the budget transmits these estimates to the President who, in turn, forwards them to Congress with his recommendations. Thus far the British and American procedures are substantially alike, inasmuch as the executive in both countries takes the initial step and submits to the legislative body a general plan of national expenditures. But there the parallel ends. In the House of Representatives the estimates go to a committee on appropriations which may recommend changes in them at will, either up or down, and from this committee they go before the whole House which has an unrestricted right both by law and by usage to increase, decrease, insert, or eliminate. There is no rule, as in the House of Commons, that additions may only be made on recommendation of the executive. And after the House of Representatives is through with the estimates the Senate of the United States (unlike the House of Lords) takes them in hand, making such further changes as it may desire. In a word there is no such executive control over financial measures in Congress as is exerted by the British ministers in parliament, and hence there is no such complete fixation of responsibility.[2]

COMPARISON WITH AMERICAN PROCEDURE.

There is a further difference. In Congress proposals for raising

[1] For a full discussion and criticism of the procedure see J. W. Hills and E. A. Fellowes, *British Government Finance* (London, 1932).

[2] For a more detailed discussion of the American procedure see the author's *Government of the United States* (4th edition, New York, 1936), pp. 371–381, and the accompanying references (p. 386).

the necessary revenues come from the secretary of the treasury through the President, but they may also be brought forward by any member of the House on his own initiative. And in either case they are considered by a different committee from that which handles the appropriations. Expenditures are handled by one set of men, and revenues by another, each working separately. The chairmen of the two committees confer a good deal, and a certain amount of team play is secured; but the responsibility is divided. Finally, it will be noted that in the House of Commons, when appropriations or revenue measures are under discussion, the heads or deputy heads of the executive departments are on the floor to explain, defend, and answer questions. In Congress this is not the case. The head of a department may be asked to submit explanations in writing, or to come in person before a congressional committee; but he does not appear on the floor of the House or the Senate, for he cannot be a member of either body.

DEFECTS OF THE BRITISH PROCEDURE.

All this does not mean, however, that the British budgetary system, taking it as a whole, is superior to the American. On the contrary there are some respects in which it is inferior. Definite fixation of responsibility is an excellent thing in its way; it makes for economy in public expenditures, but it inevitably involves a concentration of power. In Great Britain the cabinet, not the House of Commons, is the body which really controls the finances of the realm. And the cabinet is tributary to the chancellor of the exchequer, who is its financial chief and adviser. To this it will be replied, of course, that the chancellor is merely the creature of the House and absolutely responsible to it, which is all true enough if one is discussing the theory of English government. But the fact is that the House of Commons, with all its theoretical control of the ministry, does not often increase or diminish a single item in the budget, against the chancellor's will. Theoretically absolute, its power in practice is slight. The occasions on which the House has virtually compelled the chancellor to accept changes, against his own judgment and wishes, are very rare.[1] Some years ago a committee reported that in a whole quarter of a century it

GIVES TOO MUCH POWER TO THE CABINET.

[1] One such occasion arose in 1937 when the chancellor of the exchequer, Neville Chamberlain, found so much unexpected opposition among the members of his own party in the House that he withdrew certain tax proposals of great importance and permitted other significant changes to be made in the budget.

could not find a single instance in which the House, by its own direct action, had reduced on financial grounds any estimate submitted to it by the ministry.

Still, neither the chancellor of the exchequer nor his colleagues wish to take the chance of driving their followers to mutiny. On the contrary they are good politicians and quite sensitive to public opinion. They avoid, so far as practicable, the submission of proposals which stir up opposition among the people or arouse undue antagonism in the House. Even on the floor, after the proposals have been presented, they will give way if it seems political strategy to do so. With due allowance for all this ministerial sensitiveness and courtesy, however, the English cabinet is the real comptroller of the national purse. If the British budget, in most cases, were put directly into effect as soon as it has been approved by the cabinet, without going to the House at all, its final figures would not be appreciably different. But in that case the opposition would be deprived of what is now its best opportunity for launching its criticisms against the general policy of the government.

THE COMPROMISE.

It should be explained, of course, that the rule against inserting new items in the estimates, or increasing items already there, is not embodied in a statute, but merely a rule of its own which the House of Commons can repeal at any time. It is a self-denying ordinance which the House imposed upon itself more than two centuries ago and which it could rescind tomorrow if it chose. But there is no probability that it will ever do so, for the rule is one which most Englishmen (and many Americans also) look upon as a good one for any legislative body to have.

THE FAMOUS RULE NO. 66.

On the other hand the fact that private members cannot move to insert or increase any item causes many of them to lose interest in the budget. For they are interested in opening, not in closing, the public purse. The member, in any legislative body, who displays a genuine zest for cutting down items of expenditure rather than in raising them is likely to get himself regarded as a maverick by his colleagues. The only success that such members are likely to have is to succeed in getting someone else to succeed them at the next election. So, night after night, when the House is "in Supply," the chamber may be half empty. As an

DEADENS THE INTEREST OF THE INDIVIDUAL MEMBER.

Irish member once complained, it is "overrun with absentees."

It is hard to imagine anything more dreary than these "debates" on the estimates—dreary for everybody except the minister who is putting his items through and the few opposition critics who are nibbling at him. The ministers can sit snug, for they know that time is on their side. When the twenty days are up the estimates must be voted on, and they have the votes to put them through. Hence, although the discussions appear to be conducted in a go-as-you-please fashion, the estimates are really put through the House of Commons under much greater pressure than is the case in the House of Representatives. Sometimes half the entire estimates go through at Westminster in a single day—the last day. This means that millions are voted without any parliamentary discussion at all. It is a fair criticism of the British House of Commons, and one often voiced by its own members, that inadequate discussion is devoted to the financial problems of a great empire which is hard pressed to raise the billion pounds sterling that it now spends each year.

THE DRY BUDGET DEBATES.

The House of Commons has long appreciated the need for some alterations in its financial procedure. In 1912 it created a Select Committee on Estimates to go over the proposed appropriations before they came up in the Committee of the Whole House and "to report what, if any, economies consistent with the policy implied in those estimates should be effected therein." But when the World War came upon Europe this select committee was literally swamped out of existence by the huge increase of expenditures. Later the House ordered that further study be given the matter and appointed a committee on national expenditures to work out a plan whereby the estimates might be assured of more careful consideration. This committee made various recommendations, and although these have not yet been adopted one of them is particularly worth noting because it indicates where the financial procedure of parliament is avowedly weak. This is the proposal that amendments offered by members, when the House is sitting in Supply, should not be treated as hostile to the ministry, or as involving any want of confidence in it, but merely as business propositions on which the House should be free to disregard party lines. This, of course, would greatly weaken the cabinet's control over financial measures in parliament and would undoubtedly lead to the making of many changes in the estimates which the ministers,

ATTEMPTS TO IMPROVE THE PROCEDURE.

under the present usage, would never tolerate as a regular practice.

When the appropriation and finance bills have been duly passed by parliament, and have received the royal assent, it is the function of the Treasury to carry them into operation. Practically all the national revenues, whether from customs, excises, death duties, income taxes, or such national services as the post office, go into a repository known as the Consolidated Fund. This fund is kept on deposit in the Bank of England, from which it is checked out to the paymaster-general who distributes it in payment of salaries and bills. Before any transfer of money to the paymaster-general is made, however, it must be approved by the comptroller and auditor-general, an officer of high standing who is head of the exchequer, independent of the Treasury and responsible to parliament alone. His duty is to make certain that an appropriation to cover the expense has actually been made by parliament and that this appropriation has not been already exhausted.

THE CONTROL OF DISBURSEMENTS.

All appropriations are still made "to the crown" as they were in the middle ages. But they are earmarked for the use of specified departments or services, and it is not within the power of the crown to divert the money to other uses. On the other hand the spending of an appropriation is not obligatory. The Treasury can withhold an expenditure after it has been authorized and leave the money unspent.

In view of the fact that all the financial needs of the government for the fiscal year are embodied in a large appropriation bill and passed by parliament during the course of each fiscal year it may well be asked: How about the unforeseen needs which must inevitably arise after parliament has made its appropriations and is no longer in session? How are unexpected and urgent calls for military or naval outlays met? There is an element of flexibility in the British financial system which permits the government to take care of such emergencies. In the first place the regular estimates contain, in the case of each department or service, an allowance for unforeseen contingencies. From long experience in the preparation of estimates each department is able to figure out a sum that may reasonably be expected to cover things unforeseen and unexpected. Then there are certain funds, distinct from the Consolidated Fund, which can be drawn upon by the Treasury when emergencies arise either at home or

HOW EMERGENCIES ARE HANDLED.

abroad. It is required, however, that all advances from these funds shall be reported to parliament and repaid out of the appropriations of the next fiscal year.

TRANSFERS FROM SURPLUS.

Furthermore it is provided in the annual appropriation act that if a necessity shall arise for incurring military or naval expenditure not covered by specific appropriations and which cannot without detriment to the public service be postponed until provision can be made for it by parliament in the usual course, the Treasury may authorize such expenditure out of any surplus funds available at the moment in the same department. There are occasions, however, when the emergency is too great to be met by any or all of these provisions; in that event parliament must be hurriedly summoned and asked to make new appropriations.

TRANSFERS FROM REGULAR APPROPRIATIONS:

1. IN AMERICA.

In the United States, when Congress appropriates money for the use of the various departments and services, the heads of these departments are not given much discretion in spending it. Money voted for the needs of one bureau in a department cannot be used for the needs of another bureau in the same department, nor can funds voted for one purpose be used for another purpose even within the same bureau,—for salaries, let us say, instead of materials and supplies. The American tendency is to tie the executive officials tight by designating in precise detail the purpose for which the money can be spent. If an amount is appropriated for equipment, and the equipment turns out to be unnecessary, this money cannot be used for materials, or supplies, or services, or anything else that might be accounted just as useful. It is true that during the first Roosevelt administration (1933–1937) large sums were placed at the disposal of the chief executive without much restriction as to the precise way in which they should be used. But the situation during these years was one of great urgency. Under normal circumstances Congress decides how every dollar shall be spent.

2. IN GREAT BRITAIN.

In Great Britain a good deal more latitude is allowed. There the appropriations are arranged by "votes," which are divided into subheads, and these, again, into items. Parliament passes the appropriations by votes, not by subheads or items, leaving to the Treasury the right to transfer money from one subhead or item to another. Thus it is less rigid

than Congress in earmarking appropriations for specific purposes; but the Treasury in England takes up the slack that parliament leaves. Next to nothing can be done in any department by way of changing the details of expenditure, the salaries of clerks, or the duties of public employees without the approval of the Treasury. If the home office wants an additional inspector of constabulary, or the foreign office desires to add an additional secretary to the staff of a British embassy somewhere, a request must be submitted to the Treasury (the chancellor of the exchequer) and sanctioned before it becomes effective. This paternal authority of the Treasury rests upon long usage and is not now questioned or resented by the various departments. It has the merit of allowing all reasonable leeway while providing a definite responsibility for the details as well as for the gross amounts of expenditure.

BRITISH REVENUES.

The total public revenue of the United Kingdom for 1936 amounted to nearly a billion pounds sterling; that of the United States was about twice as much. The chief sources of national revenue in Great Britain are duties on imports, excises on liquor, tobacco, and various other luxuries, inheritance taxes (estates taxes and death duties, they are called), income taxes and surtaxes, corporations profits taxes, motor vehicle taxes, land taxes, stamp taxes on legal documents, and profits from government enterprises (the postal, telegraph, and telephone services). It will be noticed that almost every conceivable source of revenue is being tapped to meet the enormous expenditures which have been placed upon the country as a legacy of the World War, the subsequent industrial depression, and the new rearmament program.

THE BANK OF ENGLAND AS FISCAL AGENT.

In connection with British national finance the Bank of England deserves a word, for it is the depositary of the national funds and the government's chief fiscal agent. Founded in 1694 for the purpose of providing the nation with loans, it has long enjoyed not only the exclusive right to receive such government deposits as are kept in England but a virtually exclusive right, among English banks, to issue paper money.[1] Unlike the federal reserve banks of the United States the Bank of

[1] Both privileges are enjoyed by banks in Scotland. The Bank of England's monopoly as respects both deposits and notes is confined to England and Wales. A few English banks, moreover, which had the right to issue paper money prior to 1844 have been permitted to continue in the enjoyment of this privilege. The total amount of these issues now outstanding is relatively small.

England is not subject to control by a government board. The British government owns no stock in the bank and appoints none of its directing officials. Having no depositary of its own it merely uses the Bank of England for this purpose as a private customer would do. The bank receives the government's revenue, credits it to the proper account, and pays it out under the direction of the paymaster-general. The Bank of England also serves as a registry for government bonds and acts as the government's agent in paying interest upon the national debt.[1]

AUDITING THE ACCOUNTS.

All the financial accounts of the national government are audited in the office of the comptroller and auditor-general. This official is appointed by the crown, holds office during good behavior, and cannot be removed except at the request of both Houses of Parliament. He has no power to disallow any item of expenditure and merely reports irregularities to the Treasury for such action as it may see fit to take.[2] But the comptroller and auditor-general make an annual report to parliament and this report is referred to the standing committee on public accounts which is appointed in the House of Commons at the beginning of each session. A leading member of the opposition is usually appointed chairman of this committee. Its business is to go through the report and accounts, noting cases in which the appropriations have been exceeded, hearing explanations of any irregularities, and finally reporting to the House. The moral effect of such a report is considerable.

An informing volume on *The System of Financial Administration of Great Britain* by Messrs. W. F. Willoughby, W. W. Willoughby, and S. M. Lindsay is published by the Institute for Government Research (New York, 1917). Henry Higgs, *The Financial System of The United Kingdom* (London, 1914) is still of much value despite the fact that it is a pre-war publication. An up-to-date book on *British Government Finance* by J. W. Hills and E. A. Fellowes (London, 1932) is both explanatory and critical of the

[1] For all details see W. D. Bowman, *The Story of the Bank of England from Its Foundation to the Present Day* (London, 1937).

[2] Mention may be made of a proposal along somewhat similar lines, with respect to the functions of the comptroller-general of the United States, which was recently put forward by the President's committee on governmental reorganization. This proposal, which has not yet been favorably acted upon by Congress, would take away from the comptroller-general his present authority to disallow payments before they are made.

system. F. C. Dietz, *English Public Finance* (New York, 1933) is also valuable. Mention should likewise be made of R. G. Hawtrey, *The Exchequer and the Control of Expenditure* (London, 1921), E. H. Young, *The System of National Finance* (2nd edition, London, 1924), and H. J. Robinson, *The Power of the Purse* (London, 1928). T. L. Heath, *The Treasury* (London, 1927) is an excellent general survey, published in the Whitehall Series.

The course of British budgets during the past quarter of a century may be followed in Sir B. Mallet, *British Budgets, 1887–1913* (London, 1913), A. H. Gibson, *British Finance, 1914–1921* (London, 1921), F. W. Hirst and J. E. Allen, *British War Budgets* (London, 1926), H. F. Grady, *British War Finance, 1911–1919* (New York, 1927), and B Mallet and C. O. George, *British Budgets, 1921–1933* (London, 1933). A good brief account of procedure (with a bibliography) may be found in A. E. Buck, *The Budget in Governments Today* (New York, 1934).

More general works on public finance are E. H. Davenport, *Parliament and the Taxpayer* (London, 1919), C. F. Bastable, *Public Finance* (London, 1903), H Dalton, *Principles of Public Finance* (4th edition, London, 1927), A. C. Pigou, *A Study in Public Finance* (London, 1927), M. E. Robinson, *Public Finance* (London, 1922), and G. F. Shirras, *The System of Public Finance* (London, 1925).

CHAPTER XV

ENGLISH POLITICAL PARTIES: A SKETCH OF THEIR HISTORY

Parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them. They bring order out of the chaos of a multitude of voters. If parties cause some evils, they avert and mitigate others.—*Lord Bryce.*

WHY POLITICAL PARTIES GO WITH POPULAR GOVERNMENT.

No discussion of the art of government can lay claim to completeness if it disregards the place and function of political parties in the mechanism of the commonwealth. True enough, political parties are not of the government; they are below or behind it; they work in the twilight zone of politics; yet their rôle in the actualities of representative rulership is undeniably great. No free large country has ever been without them, as Lord Bryce has said. No free country ever can be without them—and stay free. Parties of one kind or another—Lancastrians and Yorkists, Cavaliers and Roundheads, Whigs and Tories, Liberals and Conservatives—have been functioning in England for at least five hundred years, ever since England had a parliament worthy of the name.

THE BRITISH ORIGIN.

England, in fact, is the ancestral home of political parties as we now understand them, that is, of groups organized to promote by peaceful means their own conceptions of the general welfare. Political parties, in this sense, are of British origin because responsible government is of British origin. Partyism and responsible government are inseparable; one goes with the other. Thoughtless people sometimes assure us that the world would be better off if partyism and party rivalry were amputated from the body politic—but when the operation is successful the liberty of the individual dies in the process. This has been shown in Russia, Germany, and Italy where all political parties except the dominant one have been snuffed out.

Parties are inevitable because the people of any country, when

given the privilege of disagreeing about their government, are sure to take advantage of it. They will not be of one mind as to how the government ought to be carried on. On the other hand they will not split into an indefinite number of small groups. They will range themselves into two, three, four, five, or some other small number of parties—because there are only so many possible attitudes toward the more important political issues. It is a common saying that there are two sides to every question In politics there are often more than two. Take the tariff, for example. You can raise it, lower it, revise it (by raising some duties and lowering others), or leave it as it is. Here is a political issue with four sides to it, and consequently it affords an opportunity for at least four groupings of political opinions.

THE CHOICE AMONG ALTERNATIVES.

So it is with other political problems; the alternatives are reduced by the nature of the issue, or by practical considerations, to five, four, three—and frequently to two. Anyhow, as someone has cynically remarked, there are only two sides to a public office—the outside and the inside. Parties exist, therefore, because although men and women are ostensibly free to form their own individual opinions on political questions they find themselves confronted with a limited number of alternatives, and, if you will, a limited number of offices.

There has been much controversy as to whether political parties are good or evil. Most of this discussion is beside the point. The vital question is not whether political parties are a bane or a blessing, but how they can best be made to serve the interests of democratic government. How can we make them help, not hinder, a scheme of government by the consent of the governed? And the answer to this vital question will never be secured by ignoring the existence of political parties, or by endeavoring to describe a government on the assumption that they can be left out of the reckoning.[1] Political parties, by whatever name they may be known, should be regarded in the same light as parliaments, presidents, prime ministers, and courts—as an essential part of the governing mechanism.

A HELP OR A HINDRANCE?

As for the origin of parties they probably began with human na-

[1] One of the most remarkable things about the older books on English government is the way in which they ignored this topic. They dismissed parties and partyism as irrelevant to the main theme. Until Lowell's *Government of England* appeared in 1908 no book on the subject contained even a summary discussion of English political parties in their relation to the actual workings of English government.

ture. Men have thought in groups ever since they began to think. It is much easier to think that way. Thinking is work. The generality of men prefer to let others do it for them. They take their opinions ready-to-wear. It is sometimes said that these earliest groups were factions, not parties. That is true, for they were literally, not metaphorically, at swords' points with each other. Victory was not decided by counting heads, but by breaking them. Battle-axes, not ballots, were what settled the outcome. The faction which won took all the power and all the rights Its opponents were treated as rebels, insurgents, enemies of the state. They were dealt with as the Russian Bolshevists in our own day have treated the counter-revolutionaries or as the German Nazis have dealt with the Communists.

THE EARLIEST PARTIES OR "FACTIONS."

The student of history does not need to be reminded of the factional groupings which existed from earliest times down to the close of the middle ages. He has read of Pharisees and Sadducees, Patricians and Plebeians, Guelfs and Ghibellines. Perhaps it has not occurred to him that these were political parties in embryo. Their aim was to get the upper hand, to control the affairs of the community. If we call them factions rather than parties it is only because their methods were crude or violent. In mediaeval England these political factions fought each other not only on the floor of parliament but sometimes on the battlefields as well. The Lancastrians and Yorkists, with their long drawn out and bitter rivalry, kept the land in a turmoil for almost a century. The Wars of the Roses were the work of politicians who had not yet learned to settle their controversies by the arbitrament of the ballot box. These wearers of the red rose and the white rose were members of rival parties, dynastic and anti-dynastic parties. So were the Cavaliers and Roundheads of the Stuart era Today we would call them Monarchists and Republicans, Legitimists and Reconstructionists, Conservatives and Progressives, or by some such appellations.

EVOLUTION OF PARTIES IN ENGLAND.

LANCASTRIANS AND YORKISTS.

CAVALIERS AND ROUNDHEADS.

A little later, when the supremacy of parliament became definitely established under William III, the nicknames Tory and Whig regularly replaced the older designations. The Tories perpetuated, in large measure, the traditions and opinions of the Cavaliers while the Whigs did the same for the Roundheads, but with this difference, that it was no longer necessary

WHIGS AND TORIES.

to change the monarch in order to change the government. Changing the government now meant getting control of parliament, and to this task both parties devoted their energies. Their rivalry was transferred from the battlefield to the forum. Paper replaced powder as a means of ascertaining the will of the people.

Yet the rivalry of the parties was no less keen than it had been in the age when a clash of arms decided the issues. Through the eighteenth century the Whigs and Tories fought each election as though the destiny of the nation depended on it. First one party succeeded, then the other. The Whigs controlled a majority in the House of Commons during the greater portion of William III's reign; then the Tories replaced them for the most part until 1714. Here the alternation came to an end and for the next forty-seven years the Whigs held the mastery without interruption.[1] Toward the end of the eighteenth century the Tories managed to work back into power once more, and from the era of the American Revolution to the eve of the Great Reform Act their hold was almost unshaken.

FROM THE GREAT REFORM TO THE GREAT WAR

POLITICAL PARTIES SINCE THE REFORM OF PARLIAMENT.

Since the great reform of parliament in 1832 the alternations in party ascendancy have been more frequent. The old nicknames Tory and Whig were discarded soon after this date and the more designatory appellations of Conservative and Liberal took their place. The Conservatives continued the Tory tradition, but in a somewhat modified form. They were the partisans of the established order and opposed most of the notable reforms which followed one another in quick succession during the years 1832–1835. The Liberals, on the other hand, championed these reforms in government, in industry, and in social welfare.[2] As time went on, however, the Conservatives softened their conservatism and proceeded to do some reforming on their own account. Under the leadership of Sir Robert Peel some of them joined with the Liberals in repealing the Corn Laws, for example, thus removing the import duties on grain and definitely committing the country to the policy of free trade. Incidentally

[1] This was partly due to the great genius of Walpole as a practical politician. He was prime minister from 1721 to 1742 But it was also due to the misfortune of the Tories who became involved in the two unsuccessful Jacobite rebellions of 1715 and 1745

[2] For example, the Factory Act (1833), the Poor Law Act (1834), and the Municipal Corporations Act (1835).

this action split the party wide open, and when the reactionaries once more got the upper hand the free-trade Conservatives were compelled to take refuge in the Liberal camp.

It was around the middle of the nineteenth century that English party lines became well defined and consolidated. Conservatives and Liberals joined issue on the great political questions of the period. In general the Conservatives championed the prerogatives of the crown, the powers of the House of Lords, the privileges of the Established Church, the interests of the landowner and the industrial employer, and the cause of British imperialism. They drew their chief strength from the upper social strata of the kingdom, the nobility, the squires and esquires, the country gentlemen, the clergy of the Established Church, and the upper crust of English society in general. The Liberals, on the other hand, drew more largely from that element of the British population which has been compendiously known as the middle class, although they also brought into their ranks many industrial proprietors who had emerged well-to-do from the Industrial Revolution.

THE VICTORIAN ERA.

The Liberal policy was to change existing conditions in government and in industry, both of which had drifted out of touch with the new conditions of life. They put emphasis on human rather than on vested rights. Their economic ideal was freedom of trade, free competition, laissez-faire. They favored the extension of the suffrage and believed that if the worker were duly enrolled as a voter all other things would be added unto him. Fundamentally the difference was that the Conservatives habitually looked upon themselves as the guardians of rights which had become sanctified by tradition, while the Liberals claimed to be the party of individualism, progress, and emancipation.

It is true, of course, that the actions of the two parties did not always square with these professions. At times the Conservatives found themselves promoting electoral reform while the Liberals opposed it—for example on the question of household suffrage in 1867. Two great opposing leaders came to the front during this period—Benjamin Disraeli and William E. Gladstone. Disraeli, the child of middle-class Jewish parents, began his political career as a reformer but became the idol of the Conservatives. Gladstone, the son of a knight, a graduate of Oxford, was a Tory by inheritance, by temperament, and by early

DISRAELI AND GLADSTONE

allegiance; but he led the Liberal party for more than thirty years. Under these two notable leaders all Britain ranged itself into rival camps and the two-party system became firmly entrenched. The defeat of the Conservatives always meant the triumph of the Liberals, and when the Liberals lost an election there was never any doubt as to who had won it. There was no need for coalition ministries, and there were none during the long interval from the close of the Crimean War in 1856 to the opening of the World War in 1914.

THE SPLIT OF 1886.

But conditions within the ranks of the two parties, during this long period, were not always serene. A considerable breakdown and realignment took place, for example, in 1886. To understand this episode it is necessary to know something about that ancient troubler in British politics, the Irish question. The task of governing Ireland, as will be shown in a later chapter, has been one of the most persistent and perplexing of all the great problems that the British people have had to deal with. There was an Irish problem in Plantagenet times, and it persisted under the Tudors. It was fanned into flames of rebellion under the Stuarts. The Hanoverians tried to settle it and failed Or, more accurately, they settled it but found that it would not stay so. Accordingly the Irish question came full-grown into the nineteenth century, and in spite of renewed attempts at settlement during the long Victorian era it was still running strong when the twentieth century hove into view.

ON THE IRISH QUESTION.

In one of his whimsical moods the late Samuel M. Crothers suggested that here was at least one topic which William the Conqueror, Richard the Crusader, Henry the Eighth, Oliver Cromwell, the Duke of Wellington, Benjamin Disraeli, and even Ramsay MacDonald might all of them feel qualified to discuss if they ever chanced to foregather in the Great Beyond. "How was the Irish question getting along when you left the land of the living?" any one of them might ask the others by way of starting the conversation For although separated in their mundane activities by nearly eight centuries they had all come into contact with this prize squabble of all the ages.

Ireland entered into a union with England in 1800, giving up her own separate parliament and becoming entitled to approximately one hundred members in the British House of Commons. This union was unpopular in the southern portions of Ireland from the very out-

set, and these southern constituencies began to elect members of parliament who were pledged to a restoration of Irish home rule. Hence a group of Irish members, calling themselves Nationalists, made their appearance at Westminster and gradually increased in strength as the nineteenth century wore on. Under the leadership of Charles Stuart Parnell these Nationalists became, during the eighteen-eighties, an aggressive element in the House of Commons. Although numbering only seventy or thereabouts, in a House of nearly seven hundred members, they sometimes held the balance of power; and holding it, they could overturn a ministry at will. In 1885, for example, they utilized their tactical position to overthrow the Gladstone cabinet. A Conservative ministry was then installed, but being even less disposed to grant the concessions which Ireland demanded from England, it also incurred the wrath of the Nationalists and was ousted.

THE HOME RULE ISSUE.

So it became evident that one or the other of the two major parties would have to effect an alliance with the Nationalists, and this the Liberals proceeded to do. Gladstone, in a fateful decision, committed his party to the Irish cause. His action was not dictated by considerations of political strategy alone, for he had become convinced that the Irish cause was a just one. In 1886, therefore, he brought into the House of Commons a bill providing for the reëstablishment of a parliament in Dublin. But Gladstone could not carry the whole Liberal party with him on this issue and in the end the Liberal ranks were split asunder. About a hundred Liberal members of parliament bolted the home rule bill, went over to the Conservatives, and defeated the measure, thus forcing Gladstone out of office. This affiliation of Conservatives and Liberal-Unionists (as the seceding Liberals called themselves) became permanent. So did the alliance between the remaining Liberals and the Nationalists. The accession of the Liberal-Unionists gave the Conservative party a great revival in strength, for among the insurgents were many able young parliamentarians. To the same extent it weakened the Liberals, for although they could now count upon the general support of the Nationalists, these Irish members were not always amenable to party discipline.

THE LIBERAL DEFECTION.

This realignment of 1886 did not, however, destroy the two-party system in parliament. Liberals and Nationalists continued to vote together on important questions of policy; so did Conservatives

and Unionists. In the case of the latter the fusion became so complete that the name Conservative fell into disuse and all the members of the party were commonly known as Unionists. Ministers went into office or were cast out on straight party votes; there was no third party holding the balance of power. The Unionists were in power from 1886 to 1892; the Liberals from 1892 to 1895, the Conservatives again from 1895 to 1905, and the Liberals once more after 1905. Under this regular alternation the principle of ministerial responsibility, based upon the two-party system, appeared to be functioning perfectly.

THE NEW ALIGNMENT.

Then came a new turn in affairs, caused by the phenomenal rise of the Labor party. There were Labor members in the House of Commons before 1900, but they did not belong to an organized party. Their numbers were small, and they counted for little. Save in a few constituencies the Labor vote, as such, was not well organized or fully marshalled behind its own candidates. In 1899, however, the British Trade Union Congress directed the appointment of a committee to arrange a conference of the trade unions and the socialist societies for the purpose of devising ways and means of securing an increased number of Labor members in parliament. Out of this action, in 1900, grew a federation of trade unions, coöperative societies, socialist organizations, and other bodies under the name of the Labor Representation Committee. This name, a few years later, was changed to Labor party.

RISE OF THE LABOR PARTY.

The work of effecting a thorough organization of the new party was now more vigorously carried on, and at the next general election, in 1906, no fewer than twenty-nine Labor members of one stripe or another, socialist and non-socialist, were successful in obtaining seats. This group perfected a regular parliamentary organization, with its own whips and its own policy. But the Laborites did not yet rank as a third party in the usual sense of the term, for they voted on most occasions with the Liberals In the country, moreover, Labor remained a loose federation, not a unified popular party. There was an annual congress of delegates representing labor unions, trades councils, socialist societies, and other affiliated organizations, but the congress had not yet become a dominating authority and the local organizations retained a large measure of independence.

ITS EARLY EFFORTS.

From the election of 1906 until the opening of the World War,

accordingly, the Labor party did little more than hold its own in parliament. This was in some measure due to the fact that the party became too closely linked up with the Socialists. During these years the strength of the Laborites in the House of Commons was less than fifty votes, but they exerted a much greater influence upon the course of legislation than this figure would indicate. They were in considerable degree responsible for several measures of social and industrial amelioration which the Liberals put through parliament during the years 1910–1914.[1]

THE DECADE PRECEDING THE WAR.

SINCE THE WAR

Then came the war, and with it a sudden change in the exigencies of British party politics. A Liberal ministry was in power when the conflict began, but it was presently merged into a coalition cabinet representing all parties. The Labor party was given one member in this coalition and during the early years of the war all elements worked in harmony. Political strife was momentarily adjourned, both in parliament and in the country. But it did not remain adjourned until the end of hostilities. Lloyd George replaced Asquith as prime minister, and after this change the old-time Liberals began to lose their strength in the coalition. More Conservatives (Unionists) were called into it and it ultimately became, with the exception of the prime minister and a few others, a Unionist aggregation Labor then withdrew its participation, and with a considerable body of dissenting Liberals created once more a regular opposition in parliament.

PARTY POLITICS DURING THE WAR.

No general election took place in England during the war. The existing parliament merely prolonged its own existence by passing a statute, thus giving a fine example of parliamentary supremacy. All political parties were agreed upon the wisdom of avoiding the turmoil of an election until the war could be ended. But immediately after the armistice, while the victors were still in high humor, the Lloyd George coalition ministry decided that it was a propitious time for calling the people to the polls. Hence the "khaki election" of December, 1918, was held. It resulted in an overwhelming victory for the coalition of Unionists and Liberals under Lloyd George's titular leadership.

THE "KHAKI ELECTION" OF 1918.

Very soon, however, the coalition began to disintegrate. That is

[1] The old national insurance act, for example, in 1911, and the minimum wage law in the following year.

what party coalitions almost always do after a great victory. In 1922 the Unionists notified Lloyd George that they would no longer support him and as they had formed a large fraction of the coalition's strength he resigned the prime ministership. The Unionist leader, Bonar Law, took his place and advised a dissolution of parliament. In this election campaign of 1922 the Unionists placed before the voters a program of old-fashioned conservatism, the keynote of which was a demand for "tranquillity."

THE END OF THE COALITION AND THE ELECTION OF 1922.

Now it is a significant fact that a great war is almost always followed in the first instance by a "swing to the Right," in other words a reaction against liberalism. People want a recess from excitement and a return to normalcy. An undertow, a revulsion from the idealism of the war period, gets under way.[1] In England the Unionists got the benefit of this, and virtually swept the country. They came through the election with more seats than the Liberals and the Labor party put together. Nevertheless Labor made a surprising gain by more than doubling its quota of members in the House of Commons. It now became the official opposition, while the Liberals went to a place below the gangway.

The new Unionist ministry, although it rode triumphantly into power with a huge majority in its wake, proved to be short-lived.[2] Like most post-war administrations it was dull and unimaginative. Its prime minister, Bonar Law, a Scottish business man of recognized ability who soon became seriously ill, transferred the premiership to one of his colleagues, Stanley Baldwin. The latter found himself beset by an unusual array of difficult problems, both foreign and domestic. Among them the problem of unemployment was the most serious and in attempting to solve it the Unionists (Conservatives) met their Waterloo. The Baldwin ministry decided that the only way to deal effectively with unemployment was to abandon free trade, to impose a protective tariff, and thus to procure a revival of British industry.

THE UNIONIST MINISTRY OF 1923.

[1] For a further discussion of this topic see the chapter on "The Law of the Pendulum," in the author's *Invisible Government* (New York, 1928), pp 65–70.

[2] The term "Unionist" lost most of its original meaning when the Irish Free State was established,—though not entirely so because the Ulster question still remains (see p. 287). In a general way there is now no essential difference between Unionists and Conservatives, but the tendency is to perpetuate the latter term rather than the former.

Now it is a tradition of English government that when a ministry adopts any marked reversal in policy, for which it holds no mandate from the people, it should present the issue to the voters before attempting to carry the new proposal through parliament. In obedience to this tradition, therefore, another general election was held in 1923. The Conservatives urged the adoption of a tariff on imported manufactured products (but not on foodstuffs) while both the Liberals and the Labor party clung to free trade. The verdict at the polls was against the tariff proposal, but indecisive as regards the forming of a new ministry, for although the Conservatives remained the most numerous single group in the House of Commons, they no longer possessed a clear majority. The Labor party increased its strength in this election and continued to form the second largest party in the House.[1]

ITS TACTICAL MISTAKE.

When the House of Commons assembled after the election of 1923 the Labor leader (Mr. Ramsay MacDonald) offered a resolution declaring that the Baldwin ministry did not possess the confidence of the House. The Liberals joined hands with Labor in supporting this resolution and the Baldwin ministry thereupon resigned. In accordance with the established custom, the leader of the party which had been mainly instrumental in defeating the ministry was then summoned to become prime minister. Mr. Ramsay MacDonald accepted the post, formed a ministry from the Labor party, and proceeded to carry on the administration. His cabinet was seriously handicapped, however, by not having a majority of its own adherents in the House. Being dependent upon the Liberals for every day of its existence, the Labor ministry found itself unable to carry out the promises made in the party's manifesto or platform and hence disappointed many of its followers.

LABOR TAKES THE HELM.

The MacDonald ministry, nevertheless, did better than might have been expected under the circumstances. It was dominated by men and women who did not disdain to call themselves Socialists, yet Great Britain experienced no radical departure from the capitalistic system while the Labor ministry remained in office. This was partly due to the

ITS ACTION IN OFFICE.

[1] The figures were as follows: Conservatives, 258; Labor, 191; Liberals, 159; Independents, 7; total, 615. The representation of the Labor party in the House of Commons after each election was: 29 members in 1906, 42 in 1910, 57 in 1918, 142 in 1922, and 191 in 1923.

fact that the ministry did not control a majority in the House of Commons except by sufferance of the Liberals who were not prepared to support a radical program. But apart from this balance-wheel it became clear that official responsibility has a sobering effect even upon men of socialist inclinations. Politicians always soften their intolerance when they get into power. Conservatives become less reactionary and radicals less radical. In opposition they can propound and advocate theories; but in office they have to deal with realities. So the Labor party, when it took the helm, did not seriously endeavor to transform England into a socialist commonwealth.

ITS FALL IN 1924.

A ministry in office, but not in power, does not satisfy anybody. This one was not satisfactory to Labor because the party did not have the votes to put its own program through parliament. It was not satisfactory to the Liberals who merely formed the tail of the Labor kite. And as for the Conservatives, they did not relish the unconstructive job of merely opposing every move that the Labor ministry made. Such a situation could not long endure, but the country had been through two general elections in quick succession and did not want the distraction of a third if it could be avoided. In due course it became apparent, however, that it could not be avoided, and in 1924 the Liberals precipitated the crisis by withdrawing the support which they had been giving the ministry.

THE ELECTION OF 1924 AND THE UNIONIST VICTORY.

The election of 1924 was bitterly contested. The Liberals were forced into the background while Conservatives and Labor fought a pitched battle. The Conservatives, in this campaign, relinquished their demand for a protective tariff and made their appeal to the country by denouncing what they called the pro-Bolshevist tendencies of the Labor party as demonstrated by a treaty with Soviet Russia which the MacDonald ministry had recently negotiated. Their appeal to the fears of the propertied element and to the partisans of economic stability proved successful. Indeed the Conservatives exceeded their own expectations in 1924 by carrying more seats than the two other parties put together. The Labor party lost considerable ground, but it fared better than the Liberals who now found their ranks in the House of Commons thinned to a mere handful.[1]

[1] The figures at the election of 1924 were: Conservatives, 412; Labor, 151; Liberals, 40; Independents, 12; total, 615.

The Conservatives were once more firmly in the saddle, with Stanley Baldwin again at their head as prime minister. He had an ample majority in the House, a majority so large that his followers flowed over to the opposition benches whenever the green chamber was well filled. For nearly five years the new ministry held itself firmly entrenched but its achievements were of a mottled texture. Some things it did courageously and well—for example, its handling of the general strike in 1926. Other things it did with gross ineptitude—for example, certain of its international negotiations (such as the Geneva conference on naval disarmament) and its unspirited endeavors to solve the unemployment problem. At any rate the Baldwin ministry plodded on until the five-year maximum interval between elections was almost reached; then it advised a dissolution of parliament in the spring of 1929, and the election followed at once.

FIVE YEARS OF STANLEY BALDWIN.

The law of the pendulum is continually in play—especially in English politics. The Conservatives, in the campaign of 1929, "stood on their record," but the outcome was a considerable overturn. Labor gained heavily and emerged from the election with a representation in the House almost as strong as that of the Conservatives. The Liberals were swamped, but they agreed to support the Labor ministry which once again took office with Ramsay MacDonald as prime minister. For the second time, therefore, the Labor party was in the saddle but without spurs. It was about twenty votes short of a majority in a House of over six hundred members. Hence it had the responsibility of governing the nation without possessing control of the House of Commons.

THE ELECTION OF 1929.

THE NATIONAL COALITION

For two years this second Labor ministry managed to hang on, however, and to score some notable successes in foreign policy, but in 1931 it split asunder on the issue of drastic governmental economies (including a reduction in unemployment benefits) and the imposition of new taxes as a means of balancing the budget. Thereupon a peculiar situation arose. No party could muster a majority in the House of Commons and it was very doubtful whether a general election would release the deadlock. So the king suggested a coalition of all three parties

THE COALITION OF 1931.

and is believed to have made a strong appeal in that direction to the leaders of all three.[1] Some critics have contended that if he did so, George V went beyond his constitutional authority. In any event a national coalition cabinet was at once formed, with Ramsay MacDonald continuing as prime minister. Most of his own Labor followers thereupon deposed him as their leader; but with support from the Conservatives, many of the Liberals, and what was left of his own group, MacDonald and his national coalition managed to make a strong appeal to the country in the election campaign which immediately followed (1931).

AND THE SUBSEQUENT ELECTION.

The election campaign on this occasion marked a wide departure from the traditional British practice. On the one side were the coalition leaders representing all the Conservatives, most of the Liberals, and a small section of the Labor party. Arrayed against them were a few of the Liberals and most of the Laborites. The outcome was an overwhelming victory for the coalition which captured 556 seats while the opposition won only 59. In straightening out his cabinet MacDonald included eleven Conservative ministers, five National Liberals and four National Labor members. The new government then set out to redeem its preëlection promises by balancing the British budget but encountered difficulties in its attempt to keep the currency on the gold standard, which it was ultimately forced to abandon.

BALDWIN BECOMES PRIME MINISTER.

Ramsay MacDonald remained prime minister until 1935, leading a huge parliamentary majority, made up of members most of whom were not of his own party. On two previous occasions he had been kept in office by the Liberals, now he was prime minister by sufferance of the Conservatives. Of course this last situation was not to his liking, for he had to compromise on most of his Labor principles. Eventually he stepped out, ostensibly on the ground of ill health, and Stanley Baldwin (who had remained leader of the overwhelming Conservative contingent in the House) took over the prime minister's office once more.

Within a few months parliament was dissolved and a general

[1] The whole story is not accurately known, but various sides of it may be found in Viscount Snowden's *Autobiography* (2 vols , London, 1934), pp 947–954, H. J. Laski, *The Crisis and the Constitution* (London, 1932), and in the article by Sidney Webb entitled "What Happened in 1931: A Record" in the *Politica Quarterly*, Vol. III, pp. 1–17 (January–March, 1932).

election held. The campaign proved to be an unexciting one, with no outstanding issues. Great Britain was recovering rapidly from the economic depression and this helped to popularize (as recovery always does) the existing administration. At any rate the Baldwin government was retained in power by a heavy majority. In name it continued to be a coalition, but the Conservatives by themselves obtained a majority in the House, with their National Liberal and National Labor allies serving merely to make this majority larger.[1] Baldwin in 1937 retired as prime minister and was succeeded by Neville Chamberlain, but the coalition ministry still continues in office although it is composed mainly of Conservatives.[2]

THE ELECTION OF 1935.

CHAMBERLAIN, 1937.

The political turmoils of the past twenty years in Great Britain have thrown much light upon the practical workings of ministerial responsibility and the parliamentary system. They have demonstrated the proposition that parliamentary government does not function satisfactorily unless a majority in the House of Commons is willing to accept ministerial leadership.[3] "The cabinet system," said Sir Courtenay Ilbert, "presupposes a party system, and more than that, a two-party system." It assumes that the ministry can count on a unified party support for its leadership, which is not the case with a coalition cabinet unless one party dominates the coalition. Ministerial responsibility without the power to govern can hardly be termed responsibility at all. It becomes real and effective only to the extent that a majority in the legislative body is willing to be led by the ministers. We are too much inclined to look upon the parliamentary system as one in which the legislature *controls* the executive. It is more distinctively a system in which the legislature *supports* the executive. A House of Commons that demands the right to control the ministry without the duty of supporting it is asking too much.

IS A TWO-PARTY SYSTEM ESSENTIAL IN BRITISH GOVERNMENT?

Nevertheless it is undoubtedly true that the mechanism of parlia-

[1] The coalition gained 431 seats, namely, Conservatives, 387; National Liberals, 33; National Laborites, 8; Independents, 3; while its opponents elected 154 Labor party members, 21 non-coalition Liberals, and nine others, including one lone Communist.

[2] The best general outline of British party politics since the war is the one given in Book V of J. A. Spender's *Great Britain Empire and Commonwealth* (London, 1936).

[3] For a discussion of this matter see R. Bassett, *The Essentials of Parliamentary Democracy* (New York, 1935), especially pp. 40–59.

mentary government will keep running when there are more than two strong parties in the legislative body, with no one of them controlling a majority, as witness the experience of the French Republic. Nor is it at all a self-evident proposition that under certain conditions the multiple-party system gives poorer results than are obtained under the straight two-party alignment. The dependence of a ministry upon several parties, rather than upon a single one, forces it to seek reasonable compromises and to consider all elements in the framing of the laws. It is an axiom of political science that if government is to be safeguarded against an undue concentration of authority, "power must be made a check to power." Under a straight two-party system, with ministerial domination as they have it in Great Britain, there is no real check to power when one party wins decisively at the polls The ministry becomes supreme—in administration, in lawmaking, and in finance. When it sounds the call for a vote of confidence its followers in the House will usually swallow their scruples and provide the votes. Ministerial responsibility and the two-party system, when yoked together, make for a firm, strong, quick-acting government, but the combination may readily be used to make a government too strong, too quick-acting, and lacking in that spirit of compromise which is the essence of a truly representative government.

THE MULTIPLE-PARTY PLAN HAS SOME MERITS.

Despite the surface disintegration of parties the great majority of British voters support either the Conservative or the Labor party. The Liberals, during the past few years, have shown no signs of quickly resuming their place as one of the major political parties in the British realm. Liberals of radical inclinations have for the most part gone over to the Labor party's ranks, while those of conservative tendencies have gravitated into the party which bears that name. National Liberals are to all intents Conservatives, or Liberal-Conservatives if one prefers a more designatory appellation. The present-day division in Great Britain is into two party camps although each camp contains followers who are known by different names. In essentials, if not in nomenclature, the two-party system has been restored—for the moment at least.

THE PRESENT PARTY ALIGNMENT.

GENERAL HISTORY. Strange to say, there is no comprehensive history of English political parties from their origin to the present day, and no comprehensive treatise which describes the English party system as such. The

nearest approaches to an adequate description are the ones given in the first volume of M. Ostrogorski's *Democracy and the Organization of Political Parties* (revised edition, 2 vols., New York, 1922), and in the chapters on the subject in A. L. Lowell's *Government of England* (2 vols., New York, 1908). A sixty-page survey may be found in F. A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), chaps. xx–xxii.

By Periods and by Parties. For various periods, however, and for the individual parties there are books in abundance. Among these are Keith Feiling, *History of the Tory Party, 1640–1714* (London, 1924), T. E. Kebble, *A History of Toryism* (London, 1886), W. Harris, *History of the Radical Party in Parliament* (London, 1885), Maurice Woods, *History of the Tory Party in the Seventeenth and Eighteenth Centuries* (London, 1924), F. H. O'Donnell, *History of the Irish Parliamentary Party* (2 vols., London, 1910), H Fyfe, *The British Liberal Party; an Historical Sketch* (London, 1928), and W. L. Blease, *A Short History of English Liberalism* (New York, 1913).

Party Programs. On the principles and programs of the various parties there are numerous volumes (partly historical) among which may be mentioned: Lord Hugh Cecil, *Conservatism* (London, 1912), F. J. C. Hearnshaw, *Conservatism in England* (London, 1933), G. G. Butler, *The Tory Tradition* (London, 1914), Leonard T. Hobhouse, *Liberalism* (London, 1911), C. F. G. Masterman, *The New Liberalism* (London, 1921), Ramsay MacDonald, *A Policy for the Labour Party* (London, 1920), H. Tracey, *The Book of the Labour Party* (2 vols., London, 1928), R. H. Tawney, *The British Labour Movement* (New Haven, 1925), H. B. Lees-Smith, *Encyclopedia of the Labour Movement* (8 vols., London, 1927), and Tom Bell, *The British Communist Party: A Short History* (London, 1937).

On the relation of the two-party system to ministerial responsibility there are discussions in G. M. Trevelyan, *The Two-Party System in English Political History* (Oxford, 1926), and in chap. iv of Ramsay Muir's volume on *How Britain is Governed* (3rd edition, London, 1935), as well as in R. Bassett's *Essentials of Parliamentary Democracy* (New York, 1935).

See also the references at the close of Chapter XVI.

CHAPTER XVI

ENGLISH POLITICAL PARTIES: PROGRAMS, ORGANIZATION, AND METHODS

> That these two parties still divide the world—
> Of those that want, and those that have: and still
> The same old sore breaks out from age to age,
> With much the same result.—*Tennyson.*

WHAT THE ENGLISH POLITICAL PARTIES STAND FOR.

Political parties are organized and maintained to bring into actuality the things that they stand for. What do the English parties stand for? Or, more accurately, what do they profess to stand for? From what geographical sections of the kingdom and from what elements of the population do they draw their principal support? What principles do they claim to uphold?

Before attempting to answer these questions it may be well to point out that the World War marked a serious break in the continuity of party evolution. For four years the parties adjourned their rivalries and presently began the practice of forming coalition governments. This practice, in form or in fact, has been continued ever since. Other great changes also date from the years following the close of the world conflict. Shortly after the war the Irish Nationalists departed from the House, the Liberal party went into eclipse, and Labor came to the front as a major party in British politics. These departures from the old order serve to designate the war years as a point of demarcation in the evolution of the British party system. It seems desirable, therefore, to speak first of party structure before the war and then to mention the changes that have been wrought during the past couple of decades.

THE CONFUSION OF PARTY DESIGNATIONS THROUGHOUT EUROPE.

A passing word of admonition may also be advisable in connection with any discussion of party aims and principles. It is this: Nowhere are designations more apt to be misleading than in the nomenclature of political parties. We know full well that in the United States the Republicans are not a whit more republican than the Democrats, and that Democrats are not necessarily more

democratic than Republicans. To say that Republicans believe in a republican form of government while Democrats believe in democracy would be a simpleton's way of differentiating American political parties. In Great Britain before the war the Nationalists were the most democratic of all factions; in present-day Germany the National Socialists (Nazis) are the least democratic. In France the *Action Libérale* has been everything but liberal, and the Radical Socialists are the least radical among all factions under the socialist banner.

LIBERALS AND CONSERVATIVES.

So, in Great Britain the Conservatives have not always been conservative, nor have the Liberals always been liberal in their attitude toward public questions. The Conservatives have sometimes championed reforms with the Liberals opposing them. Within the ranks of both these parties there have always been many shades of opinion. In general, of course, men and women who are conservative in temperament incline toward the Conservative party, and people of liberal views have traditionally gravitated into the ranks of Liberalism and of Labor; but the exceptions to this tendency run into the millions. Generalizations as to what "a party stands for" are virtually impossible to make—if one has a care for accuracy. Usually a political party stands, first of all, for getting itself into office and keeping itself there. It stands for itself and its friends. It may stand for one thing in opposition, and for something quite different when in power. Thus it comes to pass that although there may seem to be a good deal of difference between the respective programs of the "ins" and the "outs," there are seldom any drastic reversals of policy when the one party gives way to the other.

THE CONSERVATIVES

CONSERVATIVES HAVE SOMETIMES BEEN REFORMERS.

There have been times when the Conservative party has justified its name, but no one with a knowledge of English political history would contend that it has always been the party of reaction, or of obstruction to progress. Under the leadership of Peel and Disraeli it was militantly progressive, like the two major American parties under the leadership of the two Roosevelts. If you make a list of the various reform acts which parliament has passed during the past eighty years you will find that a very substantial fraction of them were introduced by Conservative ministers. The Con-

servatives are reformers, asserts one of their leaders, but "cautious and circumspect reformers." [1]

The personnel of the Conservative party almost inevitably compels it to be cautious and circumspect. Both before and since the war it has included in its membership most of the nobility and the country squires, most clergymen of the Established Church (the parson vote, as it is called) and many ardent churchmen among the laity. It has always been strong in rural England, especially in the southern counties. It has held in its ranks most of the barristers (lawyers), the bankers, the business imperialists, the world-exploiters, and the militarists. Likewise it has drawn heavily upon the prosperous merchant class.

SOURCES OF CONSERVATIVE STRENGTH NOWADAYS.

Most university graduates, moreover, have gone into the Conservative ranks. From 1885 to 1918 not a single Liberal member was elected to the House of Commons from any of the British universities. This does not mean, of course, that a university education tends to take the liberalism out of a young man, whether in England or elsewhere. It is merely that the British universities before the war drew their students, for the most part, from homes which were traditionally Conservative in their political allegiance. It also means, perhaps, that university graduates are likely to go into a social environment where the atmosphere is Conservative, and to become influenced by it. At any rate it has sometimes been remarked that many Oxford and Cambridge men who join the Labor party or the Liberal party as undergraduates drift into the Conservative ranks when they grow older and acquire social prominence. The fact seems to be that a university man's political leanings are not determined by the enlightenment (if any) which he derives from the curriculum but are largely influenced by two things, namely, the political affiliation of his parents and the position in life which he acquires after graduation.

The Conservative party has also made a strong appeal to what American politicians designate as "the interests," that is, the industrial corporations, the big income taxpayers, and the liquor trade or "the beerage," as this interest is jocularly called. It has also acquired some hold on the middle class, including the small manufacturers, tradesmen, and shopkeepers, although these classes were mainly mobilized in the

ITS APPEAL TO "THE INTERESTS."

[1] Lord Hugh Cecil, *Conservatism* (London, 1912), p. 9.

ranks of Liberalism during the nineteenth century. This term "middle class," by the way, although it figures on almost every page of political discussion in England, does not lend itself to precise definition. One writer has defined it as "that portion of the community to which money is the primary condition and the primary instrument of life." [1] Whatever else may be said about this definition, it has at least the merit of indefiniteness. Applied to the United States it would not leave much of the population outside its scope. Finally, until the rise of the Labor party, the Conservatives drew into their ranks a large number of mechanics, ordinary wage-earners in the cities, and agricultural laborers in the rural districts. Even yet they have managed to hold a considerable element among the wage-earners, as the size of their vote at each general election evidences. In general, therefore, the Conservative party draws from all elements in the British electorate, but its strength lies in the upper ranks of the social and economic scale rather than in the lower.

THE LIBERALS

ENGLISH LIBERALISM.

Traditionally the Liberals have been the party of reform, free trade, and laissez-faire. It still professes to believe in free trade, but it has long since discarded its allegiance to the policy of let-alone. Liberals no longer incline to the old view that free competition will work out a remedy for a nation's ills. They no longer shy at laws of an avowedly paternalistic character, as in earlier days. They are willing to leave commerce alone, but not industry. They do not balk at protecting the worker by a minimum wage and social insurance. What there is left of them believe in individualism for the rich and in collectivism for the poor. This is one of the main reasons for the decline of the Liberal party since the war. Economic and social problems of great urgency have arisen in England since 1918 and the Liberals have had no straightforward, consistent program to present. They have tried to stand in the middle of the road, and in times like these there is hardly any place for such a party.

The membership of the Liberal party before the war was drawn from a wide range. It included a substantial proportion of the professional and business classes (though not a majority of them),

[1] R. H. Gretton, *The English Middle Class* (London, 1917), p. 8.

the bulk of the small shopkeepers and tradesmen in the towns, a fair sprinkling of voters in the agricultural regions of the kingdom, and a large following among the urban workers. These workers, during the past twenty years, have been largely abducted into the two other parties. Liberalism, moreover, has always made a special appeal to the Nonconformists,—that is, to clergymen and the more devout lay religionists who are not affiliated with the Established Church.

SOURCES OF LIBERAL STRENGTH BEFORE THE WAR.

THE LABOR PARTY

The backbone of the Labor party's strength is the trade unior membership. The party includes in its ranks most of the unionizec workers of Great Britain. It has also absorbed vir tually the whole socialist vote although the allegianc of some modern socialists to the Labor party has be come less dependable than it used to be. Labor's mai numerical strength thus comes from the lower socia and economic strata. But its leadership and its intellectual strengt come to some extent from higher up. The Labor party has made considerable draft upon professional men, scholars, governmer employees, even capitalists and peers. Its appeal to the newl enfranchised women voters, and more especially to the emotion section of this electorate, has been surprisingly strong. It also draw heavily from the membership of the coöperative societies and orgar izations. Since the split in 1931 the party has veered more strongl towards socialism. It has definitely and finally rejected the polic of "gradualism," or economic reconstruction by degrees, whic it essayed to follow under MacDonald's leadership, and is no pledged to "a direct assault upon the foundations of econom power." [1]

SOURCES FROM WHICH THE LABOR PARTY RECRUITS ITS STRENGTH.

In Great Britain, as in the United States, party allegiance is some extent a matter of geography. Before the war Scotland ar Wales usually went Liberal. Today the Labor par has acquired great strength in the industrial areas both these countries. The north of Ireland (Ulste has always been stanchly Conservative, or Unionist as it still prefe to be called. In England itself there are areas with strongly Co servative tendencies and others just as consistently Labor. In

PARTY LINES AND GEOGRAPHY.

[1] H. J. Laski, *Democracy in Crisis* (Chapel Hill, N. C., 1933), p. 38.

general way the north of England and the midlands have inclined against Conservatism; while the south and east have been its traditional strongholds. One cannot say, however, that there is a "solid south" in Britain as there is in the United States. Areas in which mining and manufacturing employ large bodies of workers usually support the Labor party, while on the other hand in the fertile agricultural regions the Conservatives regularly have the advantage.[1]

Now the foregoing paragraphs will mislead the reader if he insists on construing them too literally. For there is hardly a single rule of British party politics that is not open to some important qualifications. "Tell me how a man earns his living and I will tell you how he votes" is a stock saying among English politicians; but like many unstitched aphorisms of practical politics it seems to have no firm basis in fact. Neither the Conservatives, the Laborites, nor the Liberals have had a monopoly of all the voters in any walk of life. It must not be taken for granted that because a man is a peer, or a bishop, or a banker he is necessarily a Conservative. There are peers, bishops, and bankers, quite a number of prominent ones, in the ranks of the Labor party. On the other hand you will encounter plenty of Conservatives in overalls, with dinner pails in their hands.

THE DANGER OF GENERALIZING ON BRITISH PARTIES.

A political party, like an old-time army, is made up of regulars, auxiliaries, volunteers, mercenaries, and camp followers. All but the regulars are liable to desert, in whole or in part, on occasions. The percentage of these "regulars" in the party strength is not so large in Britain as in the United States. The chief reason for this is the fact that in Great Britain the general elections do not usually turn on moral commonplaces but on fairly concrete and definite proposals. This is a consequence of the British scheme of ministerial responsibility which causes a general election to synchronize with the clash of political parties on some outstanding issue. In the United States, when the time for a general election arrives, it sometimes happens that there is no major issue engaging the public attention. The party leaders then have to rustle around and find one.

REGULARS AND NON-REGULARS IN THE PARTY RANKS.

In England this is not what happens, or, at any rate, it happens

[1] A map by E. Krehbiel printed in the *Geographic Review* for December, 1916, shows the distribution of party strength prior to the World War.

but rarely. For in England it is the issue that usually brings on the election. Until parliament has run its full five-year term there is no general election unless some great controversy arises and makes an election necessary to settle it. When such an issue arises, however, there may be three general elections in three years, as was the case during 1922–1924. As a result of this difference the party lines are less firmly drawn in Great Britain than they usually have been in America. The way an Englishman votes is to a large extent determined by his own attitude toward the immediate issue which has made the election necessary. Party allegiance does not count for as much in Hampshire as it does in New Hampshire. This is shown by the huge overturns which take place at English elections, even within a very short space of time At the election of 1923, for example, the Conservatives polled five and a half million votes; at the election of 1924 they obtained nearly eight million.

LOOSENESS OF PARTY LINES IN BRITAIN.

Between the three English parties today there is a general agreement on certain fundamentals. All three favor the continuance of the monarchy. Alike they have accepted the British commonwealth of nations as an aggregation to be defended, preserved, and more closely welded together There was a time when it could be fairly said that the Conservatives were more imperialistic than either the Liberals or the Laborites, more belligerent in their foreign policy, and more ardent in extending the far-flung range of British power. This was notably the case during the Disraeli-Gladstone duel of sixty years ago. But if there is now any real difference in foreign and colonial policy between the parties, it is not discernible to the naked eye. Issues of foreign and colonial policy have tended to become non-partisan. The great objectives remain much the same no matter which party is in power.

ALL BRITISH PARTIES AGREE ON THE MAIN PRINCIPLES OF FOREIGN AND COLONIAL POLICY.

This consensus has been shown during the years that have intervened since the World War. During this interval Britain has had three coalition ministries besides three Conservative and two Labor ministries. But the main currents of British foreign and colonial policy have undergone no substantial change. Before the advent of the first Labor ministry it was freely predicted that a Labor government would make a mess of diplomacy, alienate the dominions, and lower British prestige everywhere. Nothing of the sort hap-

pened. One reason is that the great body of permanent officials in the foreign office, the India office, and in the offices for the dominions and colonies carry on, no matter what ministry is in power. New ministers, when they come into office, can deflect the course of policy somewhat; but sharp reversals and radical overturns are normally out of the question. All three British parties have supported the League of Nations, but the Labor party has probably been the most sincere in this direction. It has opposed large armaments as a matter of principle, but in recent years has had to conform to the logic of necessity.

For many years the question of Irish home rule tinctured every British election campaign with animosity and bitterness. But all parties have now accepted the Irish Treaty and are pledged to carry out England's part of it. For the moment this convulser of the British political conscience has assumed the form of a rumbling volcano which may at any time burst into skyward flames again,—on the issue of forcing Northern Ireland (Ulster) into a union with the south. Strongbow settled this Irish question eight hundred years ago, or thought he did. Oliver Cromwell also solved the problem to his own satisfaction, and so did the younger Pitt. Gladstone spent a considerable part of his public life trying to put it out of the way, but never succeeded. Then the resourceful Lloyd George tried his hand at it, and brought the Irish Free State into being; but whether this will prove a final settlement is by no means certain. For Dublin now demands a "united" Ireland, including Ulster, and it is unlikely that Great Britain would willingly permit the forcible absorption of this northern area.

THE IRISH ISSUE IS CLOSED FOR THE MOMENT.

With a consensus on foreign and colonial policy, and a subsidence of Irish turmoil for the moment, the lines of cleavage between Conservatism, Liberalism, and Labor are mainly related to domestic problems. The Conservatives, due to the make-up of their party, are naturally more favorable to the interests of the peerage and the Established Church, while both the Liberals and Laborites are more susceptible to middle class, trade union, and Nonconformist influences. This divergence usually shows itself when matters affecting education come before parliament. The Conservatives have a marked friendliness toward the church schools which play a large part in the education of the English youth, and have

PARTY DIFFERENCES TODAY:

1. ON RELIGIOUS ISSUES.

steadily urged that these schools be generously assisted from the public funds. Both the Liberals and the Labor party, while not insisting that public money shall be entirely withheld from private schools, have been more actively interested in the upbuilding of what Americans call the public school system.[1] They have also been more friendly to vocational and technical education. The Labor party has been especially active in this direction.

2. ON FISCAL QUESTIONS.

In the matter of tariff policy there is still a good deal of free trade sentiment among members of the Labor party and among left-wing Liberals, but under a coalition of Conservatives, National Liberals, and National Laborites the country has gone protectionist. After the election of 1931 parliament established a tariff. With free trade abandoned in all other countries of the world, and even in the British dominions, it was felt that Britain could no longer continue as a dumping-ground for foreign products of every sort.

3. ON SOCIAL AND ECONOMIC RECONSTRUCTION.

It is difficult to delineate, with any degree of clearness, the attitude of the British political parties upon the various issues of economic and social reconstruction which have been forcing their way to the front in recent years. This is because the parties are not homogeneous, stabilized bodies. The Conservative party includes in its membership a strong infusion of reactionaries or die-hards, but it also shelters a larger and steadily growing element of voters who are both progressive and socially minded. The Labor party contains within its ranks all shades of radical opinion—trade unionists, socialists, Catholic workingmen who are not socialists, pacifists, and even revolutionaries. There is often more in common between a left-wing Conservative and a right-wing Laborite than there is between either of them and the extremists of their own party. But in general the Conservatives and their allies of the national coalition believe that social and economic reconstruction can be, and should be, accomplished within the existing framework of parliamentary government, private enterprise (with government regulation), and private property. The coalition government of Great Britain during the past few years has carried through measures which represent

[1] A word of warning as to nomenclature should be added here. The term "public schools," as used in England, refers to privately endowed and privately managed schools such as Eton, Rugby, and Harrow. Schools which correspond to the public schools of the United States are now known as "provided elementary schools." Formerly they were called "board schools."

a new deal quite comparable to that of the Roosevelt régime in the United States.

The British Labor party, on the other hand, is pledged to the establishment of a socialist commonwealth in Great Britain. Its program calls for a much more radical reconstruction of the social and economic order than either of the other parties have contemplated Moreover, it plans to effect this reconstruction rapidly, and not by any process of "gradualism" as the right-wing element of the party had proposed in earlier days. While expecting to establish a socialist state by non-violent methods, the spokesmen for the Labor party have made it plain that there will be no compromise with capitalism in achieving the end.[1] More specifically it is proposed that, if the Labor party obtains a majority in the House of Commons, the government shall at once proceed to take over, into public ownership, all the basic or key industries and services. These include agriculture, coal, iron and steel, water resources, electric light and power, railroads and other means of transport, together with the nation's entire banking and credit facilities. All such enterprises, under government control, would each be managed by a board or commission which in time would be responsible to a member of the cabinet The Labor program also proposes that, as regards any industries or services which are not at once taken over into public ownership, there shall be legislation to afford the workers a larger share in management. It is also proposed to elaborate the existing system of social security (old age pensions, unemployment insurance, health insurance, etc.), as well as to undertake a comprehensive rehousing of the workers, thus abolishing the slum areas which still exist in many of the English industrial communities. An expanded public works program, financed by the national government, is pledged. Finally, it is proposed to raise the age of compulsory school attendance to sixteen years and make education absolutely free up to this age.

The program of the Labor party, while it proposes the nationalization of key industries and services, does not contemplate that this shall be done by confiscating private property. Compensation would be given. This, presumably, would involve a large issue of government bonds. There is a Communist party in Great Britain and in

[1] G. D. H. Cole, *A Plan for Britain* (London, 1933), H. J. Laski, *Democracy at the Crossroads* (London, 1934), and the official publication entitled *For Socialism and Peace* issued under the party's sponsorship in 1934.

orthodox fashion it advocates a dictatorship of the proletariat, with outright confiscation of all private property; but its membership is not large and because of its Russian affiliations it is viewed with distrust even by the Laborites. There is also in Great Britain a Fascist party, or Union of Fascists as it is called, with Sir Oswald Moseley as its leader.[1] For a time it grew rapidly in membership but during the past few years has lost ground. British fascism, in its expanding days, drew from all parties, but chiefly from the unemployed in Labor's ranks.

ORGANIZATION AND ACTIVITIES

The history, composition, and programs of the three major political parties in England having been briefly surveyed, it is worth while to add a word concerning their methods of organization and their activities in election campaigns.

PARTY ORGANIZATION.

English political parties place a good deal of stress upon organization, although by no means so much as is the custom in America. Comparing England and America in this respect one might say that in England leadership counts for more and organization for less than in the United States.

English party organization in the country at large, as distinguished from party organization in parliament, dates from the morrow of the Great Reform Act Prior to 1832, when the privilege of voting was confined to a very small percentage of the people, when the process of electing a member was so often a mere gesture, there was no need for party organizations among the voters. With the widening of the suffrage, however, and the elimination of the pocket boroughs, it became apparent to the political leaders that success or failure at the polls depended on getting the new voters registered and canvassed. So registration societies were formed all over the kingdom and these gradually developed into full-fledged local party organizations. At the outset the local organizations did not attempt, save in rare instances, to place candidates in nomination. This was left to individual initiative; in other words the candidates came forward of their own volition or were nominated by a few influential members of the party.

EARLY METHODS.

In the course of time, however, the local organizations began to

[1] W. A. Rudlin, *The Growth of Fascism in Great Britain* (London, 1935).

broaden their bounds so as to include all members of the party in the ward, or borough, or county. This step was first taken by the Liberals in Birmingham during the sixties. There the Liberals of each ward adopted the practice of assembling in caucus and choosing a ward committee which, in time, sent delegates to a central association for the whole city. The general committee of this central association, representing as it did the whole body of Liberal voters in Birmingham, took over the function of dominating the Liberal candidates and promoting their election. In short, the Birmingham Liberals merely adopted the ward caucus and the city convention, thus taking a leaf from the book of practical politics in America.[1]

THE BIRMINGHAM PLAN.

The Birmingham plan of party organization proved to be a brilliant success. The Liberals, organized on the American plan, not only swept their entire slate of three candidates into the House of Commons but captured the city council as well. Naturally this achievement was noted by the Liberals in other cities, and by their Conservative opponents also. Before long, therefore, the Birmingham plan spread over most of England. It did not do this without opposition, however, for many timid-minded leaders in both parties were afraid that it would transplant to Great Britain "all the evils of American machine politics." In this they proved to be mistaken. The use of the caucus and convention in England did not result in the domination of the cities by rings and bosses. Anyhow, when the Liberals adopted this method of organization they left the Conservatives no choice but to accept it also, as a matter of self-defense.

ITS SPREAD.

The next step followed logically within a short time. This was the affiliation of the local organizations into a national body. One party organized the National Conservative Union and the other the National Liberal Federation. It was not intended that these national bodies should exercise any control over the local associations or dictate the nominations made by the latter. The avowed purpose was to guide, assist, and inspire the local organizations so that

THE NATIONAL CONSERVATIVE UNION AND THE NATIONAL LIBERAL FEDERATION.

[1] The moving spirit in this procedure was Joseph Chamberlain, who was commonly known as the "American mayor" of Birmingham by reason of his having made this office a real center of influence and authority. Chamberlain was very familiar with American party organization and methods, having spent considerable time in the United States. His son, Neville Chamberlain, is now prime minister of Great Britain.

their work might be made more effective. But both national bodies inevitably became directing factors in the work of their respective parties. Each set up a central office with a paid staff, and these headquarters kept in close touch with the local associations everywhere. Sets of rules and instructions were prepared for the guidance of the local committees, and the local associations were sometimes provided with paid organizers. On the approach of an election campaign the central offices took over the work of raising funds for nation-wide use; they supplied speakers where they were most needed; they even adopted the practice of recommending a candidate in any constituency where no strong local man appeared to be available.

THE PRACTICE OF "RECOMMENDING" LOCAL CANDIDATES.

This habit of "recommending" an outsider (usually some one who had worked for the national headquarters in a previous campaign) was not resented by the local organizations. On the contrary they often asked that a good candidate be recommended to them—preferably one able to conduct a whirlwind campaign and pay for it out of his own pocket. The practice still continues in Great Britain and not a few parliamentarians have made their way into the House of Commons during the past fifty years by grace of a central recommendation to some fighting-chance constituency in which no local man seemed willing to give battle for the party and pay the price. By this and other means, at any rate, the influence of the central organizations continued to grow apace, and eventually two small groups of party leaders in London were exerting a strong influence upon the work of the local associations everywhere.

Strictly speaking, the supreme authority in the Conservative party is the Conservative Conference which is composed of delegates from the local organizations. The Liberals and the Labor party each hold similar national conferences.[1] Unlike the national party conventions in the United States these British national party conferences meet every year (not once in four years), and they neither nominate candidates nor adopt platforms. Their main purpose is to elect certain party officials and committees, to provide an opportunity for key-note speeches, and to promote party morale. The leader of each party is chosen by the party members in the House of Commons, not by the conference.

[1] The Liberals, however, call their annual convention a council, not a conference. The schism in their ranks has also led to some changes in organization and methods.

Everywhere and always there is a good deal of sham in the make-up of party organizations. This is about equally true of England and the United States. Ostensibly, in both countries, the local committees are chosen by the voters of the party, every voter having a voice in the matter. Ostensibly, also, the party leaders are chosen by the committees and are responsible to them. But the fact is that in both countries, under normal conditions, party committees are self-chosen, self-perpetuating, and not really responsible to anyone. The voters, in nine cases out of ten, merely assent to what has been cut and dried for them by the party leaders. The chief difference between British and American procedure (in the case of local committees) is that in the one case this assent is given at a caucus while in the other it is usually given at a primary.[1]

DIFFERENCE BETWEEN THE THEORY AND PRACTICE OF PARTY ORGANIZATION.

The Labor party, since its reconstruction some years ago, does not differ greatly in organization from the two older groups. In most of the constituencies (although not in all of them) there is a Labor association in which "all producers by hand or brain" are eligible to membership. They become members on payment of a small annual fee. These associations select the Labor candidate in each constituency. There is, as has been said, a national Labor conference which meets every year. The Labor party likewise maintains a national executive (which is elected by the conference) and a central office in London. From this office the national executive directs the party activities throughout the country. It recommends candidates like the other parties, provides speakers, apportions funds, distributes campaign literature, helps to support the party newspapers, and does most of the work that is performed by a national party headquarters in the United States during a presidential campaign. All in all, the British Labor party is well organized,—better, perhaps, than either of the older parties.

ORGANIZATION OF THE LABOR PARTY.

Much work in the interest of all the parties is performed by auxiliary organizations. The Primrose League, for example, is an active propagandist body in the interest of the Conservative party.[2] So is

[1] A caucus is a meeting in which the party voters all come together at the same time. A primary is, as its name implies, a preliminary election; the party voters come to it singly, not en masse. A caucus discusses and votes; a primary affords no opportunity for discussion.

[2] This league is named in honor of the Conservative leader, Disraeli, whose favorite flower was the primrose.

the Carlton Club in London. There is a National Liberal Club, a National Reform Union, and a National League of Young Liberals.

THE AUXILIARY ORGANIZATIONS.

The Fabian Society, as every reader of socialist literature knows, has rendered great service to the Labor cause. So has the Trades Union Congress which represents the industrial side of the Labor movement. A National Labor Club serves as the party's chief social center in London. Other political clubs, leagues, and societies by the hundred are active in all parts of the kingdom. Many of them are primarily social organizations until an election looms on the horizon. Then they plunge into politics until the polls are closed, whereupon they relapse into their social routine once once.

ENGLISH AND AMERICAN ANALOGIES.

It will be seen, therefore, that English and American party organizations have much in common. Both stand in sharp contrast with the forms and practices of party organization in France, Germany, and other Continental countries. In both England and America there is a hierarchy of committees, local and national, the latter helping and encouraging (but not openly controlling) the work of the former. In both countries there are hundreds of leagues, societies, unions, and clubs, which are active in furthering the party cause. In both countries the activities and expenditures of political parties must keep within the bounds laid down by law. The chief difference is that England has fewer professional politicians than the United States, fewer men and women who spend all or most of their time working in the party interest and who expect to be paid for it in some way or other. There are political organizations in England, but no political machines, that is, no organizations which function with the machine-like precision of Tammany Hall. There are no rings or bosses in English cities or counties as in America. On the other hand there are men who virtually dominate the party organization in individual boroughs, especially the local organizations of the Labor party, and sometimes they come close to being local bosses.

CHANGES DUE TO THE RISE OF THE LABOR PARTY.

The Labor party has done a good deal to Americanize the politics of Great Britain during the past dozen years. It has taught English politicians the value of strict discipline in the party ranks. It tolerates no insurgency. Those who go before the voters as Labor candidates must get the endorsement of the party's national executive. Finally, the Labor party has brought into Great Britain a more democratic

method of raising campaign funds. It has not depended for sustenance upon a few rich men but has combed the party ranks for small contributions.

In addition to the books listed at the close of Chapter XV, mention should be made of R. S. Watson, *The National Liberal Federation* (London, 1907), W. Elliott, *Toryism in the Twentieth Century* (London, 1927), J. M. Gaus, *Great Britain: A Study in Civic Loyalty* (Chicago, 1929), especially chap. vi, Edward Pease, *History of the Fabian Society* (2nd edition, London, 1925), H. Tracey, *The Book of the Labour Party* (2 vols., London, 1925), and C. J. H. Hayes, *British Social Politics* (New York, 1913).

Party methods and activities are also discussed, more or less, in J. A. Spender, *The Public Life* (2 vols., London, 1927), E. Benn, *If I Were a Labour Leader* (London, 1926), P. G. Cambray, *The Game of Politics* (London, 1932), Frank Gray, *The Confessions of a Candidate* (London, 1925), Michael Farbman, editor, *Political Britain: Parties, Politics and Politicians* (London, 1929), F. S. Oliver, *Politics and Politicians* (London, 1934), E. R. Pike, *Political Parties and Policies* (London, 1934), George Lansbury, *Labor's Way with the Commonwealth* (London, 1935), Sir Austen Chamberlain, *Politics from the Inside* (New Haven, 1937), C S. Emden, *The People and the Constitution* (Oxford, 1933), J. K Pollock, *Money and Politics Abroad* (New York, 1932), together with such manuals as *The Liberal Way* (London, 1934) and *For Socialism and Peace* (London, 1934).

A great deal of scattered but very illuminating material on party organization and methods may be found in the biographies of such leading British statesmen as Disraeli, Gladstone, Salisbury, Parnell, Lord Rosebery, Campbell-Bannerman, Lord Randolph Churchill, Joseph Chamberlain, Balfour, Asquith, Lord Curzon, Lloyd George, Baldwin, and MacDonald.

CHAPTER XVII

LAW AND THE COURTS

Justice is the end of government. It is the end of civil society It ever has been, and ever will be pursued until it is obtained, or until liberty is lost in the pursuit.—*James Madison.*

In the history of mankind there have been many systems of law, but only two have proved to be great and outstanding, namely, the civil law of Rome and the common law of England. Other systems have come into existence during the centuries, and some of them (such as Mohammedan law) remain in operation today, but it is not too much to say that the legal fabric of practically the whole civilized world is derived from one or the other of these two great bodies of jurisprudence. The countries of Continental Europe, the Latin-American republics, South Africa, Japan, and even Scotland, have followed the civil law of Rome; while England, Ireland, the United States, and the British overseas dominions have based their legal systems upon the common law.[1] Thus one can travel over most of the world today without setting foot upon soil that does not render homage to the jurisprudence of England or of Rome. Roman and Saxon differed in many things, but one thing they had in common, a a genius for government and law. *Regere imperio populos . . . pacisque imponere morem.*[2]

TWO GREAT LEGAL SYSTEMS.

These two great systems of law, Roman and Common, are absolutely unlike, as anyone who undertakes a study of them will soon discover. The Roman law was developed by a people who, although intensely practical as ancient races went, had a strong penchant for order, symmetry,

A GENERAL COMPARISON.

[1] In French Canada there is a strong infusion of Roman law; and the same is true of Louisiana which was colonized by the French. There is a good chapter on "The Spread of Roman and English Law throughout the World" in Lord Bryce, *Studies in History and Jurisprudence* (London, 1901). See also "A Map of the World's Law" by John H. Wigmore, printed in the *Geographic Review* for January, 1929.

[2] "To rule the people with authority . . . and to teach men the way of peace." Virgil's *Aeneid*, Book VI, 847.

and uniformity. So they developed a legal system which was above all things coherent and orderly, each part consistent with every other part. The mediaeval Englishman was also endowed with a practical turn of mind but he inclined much less to logic or consistency. He left his legal system full of knots and kinks and loopholes, or, as lawyers would say, "replete with anomalies and incongruities." The Roman legal system is polished, balanced, rounded, and immobile, while the common law is still rough at the edges, devious, casual, and ever changing like the colors of an English sunset.

ORDER AND PROGRESS.

In a way, therefore, these two systems of law are an elaboration of the words *order* and *progress*, which prefigure two types of national genius. It has sometimes been said that Roman law is like Romanesque architecture in that its impressiveness arises from the proportions of the mass, while the common law is like Gothic architecture, its beauty arising from the variety and perfection of the details. Whether this simile is worth much I cannot say, nor are there many who can, for few men are proficient in both architecture and law. But as to the variety and intricacy of detail in the common law any American lawyer can testify. Therein lies its strength—also its exasperation. In other words the common law is not a code like the laws of Solon, or the Twelve Tables, but an organism every molecule of which is undergoing ceaseless decay, renewal, or alteration.

THE COMMON LAW OF ENGLAND.

What is this common law, about which Blackstone wrote in rhapsody as "the best birthright, the noblest inheritance of mankind"? What is the basis of the old saying that "common law is common sense"? In 1774 the First Continental Congress, meeting in Philadelphia, asserted that Americans were entitled to their common law "by the immutable laws of nature." Why did these sturdy colonials, on the verge of a revolt against England, lay claim to such a heritage? The answer, however brief it be, must carry us a long way back into English legal history.

ITS ORIGIN AND EARLY GROWTH.

Even prior to the Norman conquest in 1066 certain legal customs and usages had become *common* to the whole realm of England, or, at any rate, to a large part of it. But these unwritten usages were relatively few in number and they were not always clear. From time to time, therefore, they were elucidated or declared by the dooms or ordinances

which the king issued at sessions of his Witan. With the arrival of the Normans, and the strengthening of the royal authority, these nation-wide or common usages steadily increased until in time they became both numerous and complicated. When a case came before the royal justices, these judges tried to ascertain the common custom and to apply it. The decision of one judge was then followed by others, because that was the easiest thing to do, and in this way precedents and the doctrine of *stare decisis* (let the rule stand) were evolved. Thus there grew up, especially under the early Plantagenet kings, a body of rules which had never been ordained by any monarch or enacted by any legislative body, but which merely represented the crystallization of usages or customs. Nevertheless they were applied with the force of law by the king's judges wherever they went.[1]

THE COMMENTATORS: GLANVIL TO BLACKSTONE.

Then came the next step. Commentators began to take this steadily growing and somewhat elusive body of rules in hand. They arranged them in logical form, elucidated them, added their own comments, and thus gave the common law a better basis for further development. Ranulf Glanvil was the first of these common-law expounders. In the twelfth century he compiled his famous *Tractatus de Legibus et Consuetudinibus Regni Angliae*,[2] a remarkable treatise when one takes into account the difficulties which this pioneer compiler had to overcome. Other jurists continued Glanvil's work. Bracton, about the middle of the thirteenth century, edited a larger commentary with numerous citations from the decisions of the royal courts. Then, as the centuries passed, came Littleton, Fitzherbert, Hale, Coke (pronounced Cook), and, finally, the best known of them all, Sir William Blackstone, whose *Commentaries on the Laws of England* appeared on the eve of the American Revolution.[3]

These men were expounders, not makers of the law. They ex-

[1] See Sir Frederick Pollock's *Expansion of the Common Law* (London, 1904), pp. 46–50; also F. W. Maitland and F C Montague, *Sketch of English Legal History* (New York, 1915), Edward Jenks, *A Short History of English Law from Earliest Times to 1933* (London, 1934), and Harold Potter, *Historical Introduction to English Law and its Institutions* (London, 1932).

[2] It is the belief of some authorities that the *Tractatus* was not entirely the work of Glanvil but partly that of his nephew, Hubert Walter.

[3] During the past hundred and fifty years the *Commentaries* have passed through numberless editions. No other law book is so widely known throughout the English-speaking world.

plained the law as it was at the time of writing. Meanwhile the common law kept broadening down from precedent to precedent. It grew by decision and by record, not by enactment. Year after year the decisions of the courts fitted it to new needs and conditions. But it ceased to be *unwritten* law in a strict sense, for its rules and usages, as they grew, were put into written form by the succession of jurists named above. It was unwritten law only in the sense that it did not originate in statutes passed by parliament. It was customary law in that usages supplied its basis. It was judge-made law in that the courts had evolved most of it.

COMMON LAW IS JUDGE-MADE LAW.

Age gives dignity to law as to institutions. The people of England gloried in their common law; they regarded it as a shield and buckler against the royal oppression, which in truth it was. For had it not been the people's law so far back that "the memory of man runneth not to the contrary"? So when Englishmen migrated to America in the seventeenth century they brought the common law with them just as they brought the English language. To the colonist it was the basis of his personal liberties, a body of fundamental law which could not be changed at the caprice of kings or parliaments.[1] Hence the colonist guarded it as jealously as his flag, and it was the first system of law applied by his courts in the new world. Gaining good root beyond the seas it survived the Revolution, and in forty-seven states of the Union the courts are administering it today. What an astonishing survival! Take for example the rule that a father is under legal obligation to provide his minor children with the necessities of life. When and by whom was that rule ordained? It was never ordained at any time or by anybody. It goes back to the primitive customs of the Saxon tribes.

ITS MIGRATION TO AMERICA.

During the past eight or nine hundred years, however, another form of law has been encroaching on the common law—slowly at first, but of late more rapidly. This is statute law, or law enacted by a regular lawmaking body. In Norman and Plantagenet England, as the earlier chapters of this book have already pointed out, the king made laws, first in his Great Council and later in parliament. And parliament became in time the dominant factor in making the statutes of the realm. Today, therefore, parliament can change any rule of the common

ITS RELATION TO STATUTORY LAW.

[1] See the chapter on "The Fundamental Law" in C. H. McIlwain's *High Court of Parliament* (New Haven, 1910).

law at discretion, and it does make some changes at almost every session. Year by year statutes are passed by parliament to cover things which the common law has failed to cover, or to clarify its provisions, or to codify them, or to enlarge them, or to vary them, or to repeal certain of them altogether, establishing different rules or principles in their stead. When the common law conflicts with a statute, the statute always prevails. Hence, as statutes multiply, the common law is cut into more and more deeply.

PRESENT STATUS OF THE COMMON LAW IN ENGLAND.

Nevertheless, the civil (as distinguished from criminal) law which the courts of England administer at the present time is for the most part common law. The statutes, numerous though they are, cover a relatively small portion of the entire field.[1] They have dealt mostly with administrative matters and machinery. Many statutes would have no meaning were it not for the common law. This is because most of the underlying rules relating to the rights of the individual are based on common-law principles—such, for example, as the principle that men are under legal obligation to pay their debts, to refrain from injuring the property of others, to fulfill their contracts, to support their families, to seek redress in the courts and not by their own direct action, to keep the peace, and to be presumed innocent until proved guilty.

Whence arose the rule that jurymen should be chosen by lot, that there should be twelve jurors, and that they should reach their verdict in secret? By whom was it enacted that hearsay is not evidence, that a man must not be compelled to incriminate himself, and that an accused shall be given the name of his accuser? These things did not originate in any constitution, charter, or bill of rights. Where was it first decreed that the citizen cannot sue the state without its own consent? Or that a government official who commits an offense, even in his official capacity, is amenable to the ordinary courts? You will search in vain through the acts of parliament for the origin of any of these legal principles, or for a hundred other fundamental ones which every Englishman and American now accept as self-evident necessities, but which are the very things which differentiate Anglo-American jurisprudence from that of Continental European countries.

[1] The same is true of the United States, although hardly to a like extent. Some states have cut more deeply into the common law than others. In American law schools at least two thirds of the instruction is devoted to the common law, and only one third (or less) to statute law and equity.

The purpose of law is to promote justice. And justice, as James Madison once said, is the end of government. Law is merely a body of rules whose aim is the systematic and regular attainment of that end. But to fulfill its high purpose the law must keep step with social and economic progress—which often it does not. The great merit of the common law is that it represents the survival of the fittest among the various legal rules which successive generations of men have tried. Having stood the test of time and proved itself suited to the needs of the modern community, the common law might well be regarded as a fairly true embodiment of justice. But people are often impatient with things that are old, and want things that are new—in law as in everything else. So parliaments and legislatures are importuned to set aside various rules of the common law, replacing them by statutory provisions. And the new statutes often serve the ends of justice less acceptably.

COMMON LAW AND COMMON SENSE.

EQUITY JURISPRUDENCE

Then there is equity. The courts of England administer, in addition to the rules of common and statute law, a third branch of jurisprudence known as the rules of chancery or equity. These terms convey a very vague, and often a misleading impression to the undergraduate's mind. He reads in the newspapers that an estate is "tied up in chancery" or that somebody has "won his case in equity," and both intimations are as Sanskrit to him. Perhaps he has a guess that chancery has something to do with chance, and that equity is derived from *equus*, a horse. But chancery and equity are synonymous terms; they refer to a collateral branch of jurisprudence which runs parallel with the common law and the statutes, with rules administered by the courts in much the same way. The rules of equity are not necessarily more equitable than the rules of common and statute law. Law and equity are alike designed to promote justice; but in somewhat different fields, and by different methods of procedure.

CHANCERY OR EQUITY.

To understand what is meant by chancery, or equity jurisdiction, one must know something about origins, and these go back to early Plantagenet, perhaps even to Norman times. The embryo of modern equity is to be found in the mediaeval legal doctrine that the king could do no wrong, being the source of law and justice. As the legal sovereign he might miti-

THE ORIGIN OF CHANCERY.

gate the rigor of the law in the interest of justice. So whenever it appeared to a suitor in the regular courts that the strict administration of the common law would fail to give him justice, he could petition the king for intervention. He could ask the king to give him some redress that could not be had by bringing a lawsuit.

At first these petitions for royal intervention dealt mainly with situations which the common law did not cover, or covered inadequately, and in which the judges could find no way of redressing an obvious wrong. Or, on occasions, the king was petitioned to redress a miscarriage of justice which resulted from a technicality or an accident or an error in the application of the law. At the outset such requests came to the king infrequently, but as time went on they began to pour in by the hundreds. Naturally so, for when it became noised abroad that the king would intervene to forestall or redress injustice there were many persons with real or fancied grievances who sought his intervention.

ITS EARLY GROWTH.

In the beginning, moreover, the king tried to deal with each petition on its merits, giving the matter his personal attention and sometimes discussing it with his council. But he soon found that if he kept on doing this he would have time for nothing else. So he hit upon the expedient of doing the work by proxy, in other words the plan of referring all such petitions to his chancellor or principal secretary.[1] The chancellor, in these days, was invariably a bishop or other high churchman, and hence might be presumed to have sound ideas as to what constituted justice between man and man. He was commonly referred to as "the keeper of the king's conscience." But even the chancellor eventually found himself overwhelmed with petitions, and in time it became necessary to appoint "masters in chancery" to assist him in his work. Thus there gradually evolved a regular court which came to be known as the court of chancery.

ITS EVOLUTION INTO A BRANCH OF JURISPRUDENCE.

Now every petition presented to the court of chancery was originally supposed to be dealt with on its own individual merits. And so long as petitions were relatively few it was practicable to deal with them in this way. But with the great increase in its business the court of chancery found itself compelled to set up some general rules. No tribunal, when it has a large number of cases to adjudicate, can decide each of them on its own merits without refer-

[1] The date commonly given for this transfer is 1280.

ence to other cases. Sooner or later it finds that the merits of many cases are substantially alike, and hence that they must be decided in the same way, otherwise gross injustice would be done. Every court, no matter what its jurisdiction, inevitably creates a body of precedents which are virtually binding upon itself. So it was with the court of chancery. Precedents, traditions, maxims, rules, and exceptions were evolved one by one until England found herself endowed with that elaborate and intricate branch of jurisprudence which is now known as equity.

By the close of the middle ages, therefore, three branches of jurisprudence had been marked out in England—common law, statute law, and equity. All of it was the law of the land; all of it had its source in the authority of the king. Common law was the usage of the realm as declared by the king's courts; statute law was the work of the king in parliament; equity was the outgrowth of the king's position as the fountain of justice, above the law.

THE THREE ARMS OF THE LAW.

In procedure, however, a distinction between law and equity had grown up, because the court of chancery did not follow the usage of the law courts, but developed a different system of its own. Incidentally it began encroaching upon the law courts, claiming the right to issue injunctions against persons who tried to seek remedies at law. Thereupon a merry rivalry ensued, and for a time it seemed as if equity might eventually spread itself over the whole field of civil justice, but in the reign of James I equity was fenced back into its own field. The lines of demarcation between common law and equity were not made absolutely clear at this time, however, nor are they clear in all cases today. Still, in a general way, every lawyer knows where the law leaves off and where equity begins.

THE RIVALRY OF LAW AND EQUITY.

In what cases, then, are the rules of equity applied by the courts today? Let it be explained, first of all, that equity has nothing to do with crimes, but only with civil controversies. All criminal cases go to the law courts. In the second place, only a small proportion of civil cases come within the field of equity jurisdiction. Most of them are adequately covered by the rules of common law or by the provisions of statutes and must be determined accordingly. Nevertheless, there are some controversies which are governed exclusively by the rules of equity,—for example, controversies arising out of the administration of a

WHAT EQUITY IS TODAY.

trust by a trustee. And there are some cases in which redress may be sought either at law or in equity as the aggrieved person may prefer. These are known as instances of concurrent jurisdiction. In general, however, equity follows the law, in other words equity does not intervene save in cases where the remedy at law can be shown to be inadequate.[1]

LAW AND EQUITY ARE NOW DISPENSED BY THE SAME COURTS.

The same courts in England (as in the United States) now administer both law and equity. A statutory fusion of the two was provided by the Judicature Act of 1875. The court of chancery and the common-law courts were merged into a single high court of justice. As a matter of convenience, however, the high court was organized in "divisions;" and to the chancery division were assigned all matters which were dealt with by the old court of chancery prior to 1875. But the work of the chancery division is not confined to the giving of remedies at equity; it extends to the giving of common-law remedies as well. In a word, there are no longer two competing systems of jurisprudence, but a single system, with two branches which follow somewhat different procedures. Do not misunderstand this paragraph as implying, however, that the rules of law and equity have been combined. Equity is as separate a body of jurisprudence as ever it was. Only the administration of the rules has been merged.

THE SYSTEM OF COURTS IN GENERAL.

This, then, is the jurisprudence that the courts of England administer. Note that it is the courts of England (including Wales), not the courts of Great Britain. There is no system of law applying to the whole kingdom, much less to the entire British empire or commonwealth of nations. There is no one court with final jurisdiction over the whole British empire, although the House of Lords is virtually a supreme court for Great Britain and Northern Ireland, as will be seen later. India, Southern Ireland, and the various dominions, such as Canada and Australia, have their own legal systems, and their own courts, but appeals may sometimes be carried to London where they are heard

[1] It would be folly to attempt, in a few paragraphs, any statement of what the rules of equity are, how they are administered, and how they supplement the rules of law. Even elementary textbooks on equity run into hundreds of pages, with chapters on trusts, mortgages, perpetuities, liens, fraud, mistake, accident, subrogation, accounting, marshalling of assets, estoppel, specific performance, discovery, injunctions, receiverships, and all sorts of technical matters.

and determined, as will be later explained, by the judicial committee of the privy council.

JUDICIAL ORGANIZATION

THE JUDICATURE ACTS.

The present-day organization and procedure of the English courts is only about half a century old. The courts themselves are much older, of course, but they were entirely reconstructed by the Judicature Acts of 1873–1876. Prior to 1873 the judicial organization of England was in a state bordering on chaos, with numerous tribunals possessing special functions, archaic procedure, and overlapping jurisdictions. The general reorganization then brought the higher courts into a unified system with simplified procedure.[1]

THE DOUBLE HIERARCHY OF ENGLISH COURTS:

One of the first features of English judicial organization that attracts the attention of an American student is the bifurcation of court business. In the United States the same court usually handles both civil and criminal cases, although the two classes of suits may be assigned to different sittings. The organization of the English courts, on the other hand, is based upon a vertical division between criminal and civil cases; the same courts do not usually exercise jurisdiction in both fields. A criminal case, it should be explained, is one in which the prosecution is conducted in the name of the crown; a civil case is one in which some private citizen or corporation brings a suit against another.[2] One aims to impose punishment for a crime; the other to obtain redress for a tort or civil wrong.

1. THE CRIMINAL COURTS.

In England when a person stands charged with a crime he is brought before one or more justices of the peace, or, in the larger towns, before a stipendiary magistrate.[3] Minor cases are dealt with summarily in these courts, which are known as courts of summary jurisdiction. Appeals may be carried to the court of quarter sessions, which is a county court.[4] The court of quarter sessions also deals with cases which

[1] A good general account of the present system is given in C. P. Patterson, *The Administration of Justice in Great Britain* (Austin, Texas, 1936).

[2] It is also possible, of course, for the crown to bring a civil suit against an individual or corporation.

[3] This official is called a stipendiary magistrate because he receives a salary, while justices of the peace do not.

[4] Some of the larger towns, however, have courts of quarter sessions of their own.

are beyond the jurisdiction of the justices but not serious enough to warrant holding the accused for the assizes. If the evidence appears to indicate the commission of a serious offense (such as murder or manslaughter), the prisoner is held for trial at the next assizes. This is the designation of a court which is held periodically in each county, and in each of the larger towns, by a judge of the high court who goes around on circuit and sits with a jury. The assizes, to some extent, deal with civil as well as with criminal cases. For the metropolitan area of London there is a central criminal court, popularly known as the Old Bailey, which is to all intents the assize court for London and sits at least twelve times a year.

APPEALS IN CRIMINAL CASES.

An appeal from these tribunals may be taken on points of law in any criminal case (or, under certain conditions, on questions of fact) to a court of criminal appeal which is made up of judges assigned to it from the king's bench division of the high court of justice. Finally, if the attorney-general gives consent, the defendant in a criminal case may carry his appeal to the House of Lords. The attorney-general does not ordinarily give this permission unless some new or perplexing legal question is raised. The gamut of criminal justice in England, therefore, runs through summary jurisdiction, quarter sessions, assizes, court of criminal appeal, and House of Lords.

2. THE CIVIL COURTS.

Civil cases in which no large amounts are involved come up, first of all, in courts which are called county courts, although their jurisdiction does not in any way coincide with the bounds of the counties. These courts sit at frequent intervals in various parts of the district over which they have jurisdiction. They are presided over by judges who are appointed by the lord chancellor from among barristers of at least seven years' standing Strangely enough, however, most of the cases do not come before the judge at all. For at each place where a county court sits there is an official known as the register who is in effect a court clerk and he disposes of many suits by arranging compromises. Appeals from the county courts are taken to the high court of justice (see *below*), and from thence an appeal may be carried to the court of appeal which is the upper chamber of the high court of justice. If the amount involved is sufficiently large, the case comes before the high court in the first instance and does not go to a county court at all.

This high court of justice, to which reference has been made in

the foregoing paragraph, is organized in three divisions, namely, the chancery division (or court of chancery), the king's bench division, and the division of probate, divorce, and admiralty. Cases come from the county courts to each of these divisions, depending on the nature of the case. Appeals from the three divisions go to the court of appeal,[1] and under certain restrictions may be finally carried to the House of Lords. The ladder of civil courts, therefore, is county court, high court, court of appeal, and House of Lords.

THE HIGH COURT OF JUSTICE.

For Great Britain and Northern Ireland, it will be noted, the House of Lords is virtually the court of last resort. But this does not mean that the seven hundred members of the House of Lords are expected to hear and determine the technical points of law which come up on appeal from the courts below. All such appeals are heard by seven law lords, namely, the lord chancellor and seven lords of appeal in ordinary.[2] These dignitaries, although members of the House of Lords, need not be hereditary peers. The lord chancellor is the presiding officer of the House and a member of the cabinet. The six lords of appeal (or law lords, as they are more commonly called) hold peerages for life. Invariably they are men of high judicial distinction, eminent judges or lawyers who are made life peers in order that they may exercise judicial functions which belong to the House as a whole. But these law lords, when in session, constitute for their own purpose the whole House of Lords and are not in any sense a mere committee of it. They give, and do not merely recommend, judgment.

THE HOUSE OF LORDS AS A COURT.

Special attention should be called to one other high tribunal, the judicial committee of the privy council, which is the ultimate court of appeal in cases which come from the courts of India, the British dominions and colonies, as well as from the ecclesiastical courts in England.[3] Thus its jurisdiction covers a very wide geographical range. But it is not a court in the ordinary sense of the term. It is made up of the lord chancellor and former lord chancellors,

A UNIQUE TRIBUNAL: THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

[1] The three divisions of the high court, together with the court of appeal, technically form one court known as the supreme court of judicature.

[2] Other peers who hold, or have held, certain high judicial offices, may sit with them if they choose.

[3] In addition it hears appeals from the courts of the Channel Islands, the Isle of Man, and from prize courts in time of war. Prize courts are courts which deal with the condemnation of captured vessels and other property.

the six law lords already mentioned, the lord president of the privy council and some other members of that body, together with certain judges appointed from the higher courts of India and the dominions —about twenty jurists in all. But the work of the judicial committee is actually performed by the lord chancellor and the six law lords, aided by their overseas colleagues on matters affecting their respective territories. This assistance is indispensable because the appeals which come before the judicial committee involve not only the interpretation of the common law but the application of principles derived from various widely differing legal systems, such as those of India, Hongkong, French-Canada, and Malta.[1]

BASIS OF ITS JURISDICTION.

Not being a court in the usual sense of the term, the judicial committee of the privy council does not render judgment. It merely recommends to the crown that decisions of the courts in India, Canada, or elsewhere, be confirmed or reversed. Every decision ends with the words: "Their Lordships will therefore humbly advise His Majesty, etc." But since its recommendations are always followed, they are judgments to all intents and purposes. They are always followed by an order-in-council embodying the recommendations in the form of a judgment. Here, again, we have a survival of the ancient principle that the crown is above the law and may set aside judicial decisions. That idea died out in England long ago, and decisions of the regular English courts can no longer be set aside by a royal order-in-council. But in India and in the British colonies the doctrine of the crown's judicial supremacy has lived on.

ITS PROCEDURE.

When, therefore, a suitor is dissatisfied with a decision of the supreme court of Canada, for example, he is in certain cases allowed to "petition His Majesty" for redress. His Majesty, so the theory runs, turns for advice to his privy council, and the privy council refers the issue to its judicial committee. The committee hears the arguments and recommends that the petition be granted or denied. That is the theory of the procedure. But practice has found a shorter cut and the petition goes directly to the judicial committee which in effect pronounces final judgment. There is no appeal from the rulings of the judicial committee, hence it is a supreme court within its own field of juris-

[1] It will be observed that although there are two courts of last resort, the House of Lords and the judicial committee of the privy council, the men who decide the cases are virtually the same in both.

diction. And this domain is one of vast geographical extent. It serves as a tribunal of last resort for more than three hundred million people, scattered all around the world from Bulawayo to Vancouver, from Singapore to the Barbados. It is, to a degree, the high court of the British commonwealth of nations.

Not all cases arising in this vast area, however, can be brought to London on appeal. Under the provisions of the Statute of Westminster (1931) any dominion may shut off appeals if it so desires. And in the case of Canada, Australia, and South Africa no appeal can be carried to London unless the highest Canadian, Australian, or South African court gives permission. As a matter of practice the supreme court of Canada gives such permission rather freely,[1] while the Australian and South African highest courts normally refuse it. Appeals to London from the decisions of the supreme court of the Irish Free State caused a good deal of friction, and the Irish authorities in 1933 abolished the right of appeal altogether. From India and the colonies no appeal can be brought to London unless leave to bring it has been first obtained from the judicial committee itself. Such leave is hardly ever given in criminal cases; in civil cases it depends on the character and importance of the issues raised. Some cases, however, may be appealed to the judicial committee as a matter of right, that is, they are cases to which the jurisdiction of the committee has been definitely extended by law, and no permission is required to appeal them.[2]

NOT ALL CASES CAN BE APPEALED TO IT.

JUDICIAL PROCEDURE

In the organization and procedure of the English courts there are certain features which ought to have a word of explanation because they are largely responsible for the favorable reputation which these courts enjoy, both at home and abroad. Leading American lawyers and judges have frequently paid tribute to the independence, promptness, and impartiality with which justice is administered by English tribunals. One reason can be found in the position of absolute independence which all the

SOME OUTSTANDING FEATURES OF ENGLISH JUDICIAL ORGANIZATION AND PROCEDURE:

[1] But only in civil controversies. Appeals in criminal cases are prohibited by a Canadian law.

[2] The details are explained in A. Berriedale Keith, *The Constitution, Administration, and Laws of the Empire* (New York, 1924), pp. 29–31. See also N. Bentwick, *The Practice of the Privy Council in Judicial Matters* (3rd edition, London, 1937).

judges of English courts enjoy. They are appointed by the crown and hold office for life. There are no elective judges in England or in any part of the British empire. Even Ireland, in its self-drafted constitution of 1937, did not deign to follow the example set by most of the American states. The practice of electing judges inevitably draws the courts into politics and renders them susceptible to political influences. England has done well to preserve the independence of her courts by holding to the principle of an appointive judiciary. Officers of the English courts other than judges—such as sheriffs and clerks—are also appointed, not elected, and have permanence of tenure.

1. THE LIFE TENURE OF JUDGES.

A second characteristic of English judicial administration is its speed. English judicial procedure does not seem at first glance to be simple, and some archaic formalities are still retained in the court room although they seem to serve no useful purpose. Nevertheless everyone knows that cases move far more rapidly in English than in American courts.[1] This is mainly due to the greater discretion which English judges possess in dealing with legal technicalities. And this, again, arises from the absence of rigid constitutional provisions governing the legal rights of the citizen. English courts do not tolerate the pettifogging, dilatory, hair-splitting tactics which lawyers are so freely permitted to use in American halls of justice The judge rules his court room, pushes the business along, and declines to permit appeals from his rulings unless he sees good reason for doing so. Moreover, when appeals are taken, the higher courts never upset the judgments of the lower ones for merely technical errors. They deal with merits, not with quibbles.

2. THE ACCELERATION OF BUSINESS.

Something may also be attributed to higher standards among the members of the legal profession. In England, as has already been mentioned, there are two kinds of lawyers: solicitors and barristers. The solicitor deals directly with the client and prepares the case for trial. But he does not himself present the case in court; he engages a barrister to do this for him. The barrister is a specialist in presenting evidence; his business is to appear in court after everything has been made ready for him. This division of labor results in cases being better prepared and better presented than in America

3. THE HIGHER STANDARDS OF THE LEGAL PROFESSION.

[1] A detailed comparison of the two systems is given in Pendleton Howard, *Criminal Justice in England* (New York, 1931).

where the same lawyer tries to do both things and often does neither of them well. To *prepare* a case requires patient industry, a scrupulous regard for accuracy, and a relish for details,—in a word, the research quality. To *present* a case effectively requires familiarity with court procedure, quickness of perception, dexterity in questioning—in a word, the argumentative quality. Some lawyers have one quality and some the other. Very few have both.

A fourth feature of English judicial administration is the care with which the jury, as an institution, has been safeguarded against abuse. England is the ancestral home of the jury; it was there that the grand jury and the trial jury first became regular agencies of inquiry and adjudication. In the trial of all serious crimes, and in civil cases involving a substantial issue, a jury trial may be demanded in English courts except the lowest and the highest. In all serious criminal cases, moreover, the accused is proceeded against by a formal indictment which sets forth the nature of the offense and he is entitled to a copy of this statement. But indictments are not returned by a grand jury, as in America. England virtually abolished the grand jury in 1933. The indictment is now framed by a judicial clerk with the aid of the prosecuting solicitor. England has been wise, moreover, in not overworking the trial jury system by extending it to the trial of unimportant civil disputes, thus making jury service a burden which busy citizens seek to evade. The jury system is under fire in the United States because it has been overworked and overburdened. No institution, however good, will stand an unlimited strain without giving way.

4. THE JURY SYSTEM HAS NOT BEEN OVERBURDENED IN ENGLAND.

But the most impressive thing about the work of an English court is the fairness with which cases are heard and decided. The judges, not the lawyers, determine the pace. Barristers know that the manhandling of witnesses will not be tolerated, and they keep within the bounds of decency. They do not turn the court into a grill room. It amazes an American lawyer to see a murder trial begun and ended within a week, even when many witnesses are examined. In American courts it often takes that length of time to get the jury chosen. English courts keep abreast of their calendars and thus prevent long delays which are in effect denials of justice. It may be, of course, that this regularity with which the calendars are cleared

5. NO MANHANDLING OF THE WITNESSES.

occasionally spells injustice, but there is less of it than in courts where lawyers have their way.

6. NO SYSTEM OF ADMINISTRATIVE COURTS IN ENGLAND.

A final characteristic of the English legal system remains to be noted, for it stands in contrast with what one finds in France, just across the Channel. This is the absence of a broad distinction between ordinary law and administrative law, between ordinary courts and administrative courts. In France, as will be seen later, the officers of the government are not amenable to the ordinary courts for certain acts done in their official capacity. For such actions they must be sued, if at all, in special courts known as administrative courts which follow a procedure of their own. The English common law recognizes no distinction between the acts of a government official and those of an ordinary citizen. The only official who is exempt from the jurisdiction of the regular English courts is the monarch himself. Anybody else, when brought to the bar of justice, is required to show that his action was within the law, otherwise he becomes personally liable for any injury that he may have done. English jurists have laid great stress upon this right of the citizen to summon public officials before the ordinary courts. They regard it as a right which places their legal system a notch above that of their Continental neighbors.

IS THIS AN ADVANTAGE?

But there is no occasion for Englishmen to harbor a superiority complex on this point. They are rapidly developing a system of administrative lawmaking and of administrative adjudication for themselves,—more rapidly than most of them realize.[1] The system of administrative law as it exists in France, moreover, does not deprive the French citizen of any substantial right that a Briton possesses. It is true that the Englishman can usually bring suit against a public official in the ordinary courts, and perhaps secure an award of damages; but this will not avail him much unless the official is able to pay the award, which often he is not.[2] The Frenchman must bring his

[1] See *above*, pp. 112–114.

[2] In England a suit for breach of contract may be brought against the crown by means of the procedure known as the "petition of right"; but no action for tort (arising, e.g., from the negligence of a government official) can be brought against the crown.

Although there is no regular system of administrative courts in England or in the United States, there has been a considerable development of administrative law in both countries. These rules of administrative law are interpreted and

suit (under certain circumstances) in special administrative courts which are provided for the purpose. That is not really a hardship, for if he obtains an award it is always enforceable, for it is an award against the government, not against the official personally. So, if we regard the matter from the standpoint of what an aggrieved individual can actually obtain in the way of redress against an abuse of power on the part of public officials, the absence of a regular system of administrative courts in England (and in the United States) is not necessarily a matter for congratulation. More will be said on this subject, a little later, in describing the judicial system of the French Republic.[1]

7. THE ENGLISH CONCEPT OF UNCONSTITUTIONALITY.

An outstanding difference between English and American jurisprudence remains to be noted. The concept of unconstitutionality with which we are so familiar in the United States, is wholly unknown to the courts of England. No English law is ever declared unconstitutional by the courts, for nothing that parliament does can be set aside by any court, high or low. It matters not that the law is repugnant to the provisions of Magna Carta, the Petition of Right, the Habeas Corpus Act, the Bill of Rights, the Parliament Act, or any other of the so-termed constitutional landmarks. If it has been enacted in good form it stands. Hence when an Englishman says that some action of parliament is unconstitutional he merely implies that it is a departure from some age-old tradition. He does not mean that it is legally invalid or that there is any hope of having it declared so. But acts of the Indian and colonial parliaments can be held unconstitutional in true American fashion And orders-in-council may be invalidated if they go beyond the authority of the statutes.

8. NO FORMAL GUARANTEES OF INDIVIDUAL LIBERTY.

In America the citizen is accustomed to place a good deal of emphasis upon his constitutional rights,—for example, the right to freedom of speech, freedom of the press, freedom from unreasonable searches and seizures, freedom of worship, and the other rights which are guaranteed to him in the national or state constitutions The Englishman has no constitutional rights in this sense, none that are beyond the legal authority of parliament to infringe. If parliament

applied by various executive departments, bureaus, and boards—generally with the right of appeal to the regular courts.

[1] See Chapter XXX.

were to allow the taking of private property for public use without just compensation, no court would stand between it and the despoiled citizen. But the Englishman loses nothing by reason of this absence of formal written guarantees. His rights are securely guarded by the ancient usages and traditions of his government. These traditions and usages are in reality more effective than any set of phrases written on paper. Freedom of speech, freedom of the press, freedom of worship, and the other civil rights have become so deeply ingrained in the national life that parliament, with all its technical omnipotence, dares not abridge them in time of peace.

THE INFLUENCE OF TRADITIONS.

Quid sunt leges sine moribus? Of what value are laws without traditions? The written decree does not amount to much unless it has the will and sentiment of the nation behind it. The French constitution of 1791, for example, contained the most ironclad guarantees for freedom of the press, freedom of conscience, and the right of public meeting. Yet, as Professor Dicey says, "there was never a time in the recorded annals of mankind when each and every one of these rights was so insecure, one might almost say completely nonexistent, as at the height of the French Revolution."[1] The Mexican constitution of today contains a bill of rights closely modeled on that of the United States. It is studded with comprehensive guarantees for all sorts of rights. Yet these solemn assurances, as everyone knows, have been chiefly honored in the breach. And in the Constitution of the United States there stands a provision that no citizen (even in Georgia or South Carolina) shall be deprived of the suffrage on account of race, color, or previous condition of servitude!

CUSTOMS ARE BETTER SAFEGUARDS THAN LAWS.

There is a certain advantage in having the liberties of the citizen based on traditions rather than upon law. For laws and constitutions are necessarily precise and technical in their terminology. This precision makes them rigid, and when emergencies arise it is found that they either go too far or not far enough. It is exceedingly difficult to frame guarantees of individual liberty so that they will amply protect the citizen and yet not become susceptible of abuse. Freedom of speech, and of the press, cannot be defined in unqualified terms. In England the rights of the citizen are broadly guaranteed by constitutional usage. But parliament may make exceptions to any and all of them when the occasion demands. So the "high court of parlia-

[1] *The Law of the Constitution* (New York, 1889), p. 186.

ment" is a designation which has not lost its original significance. It is the supreme tribunal which interprets, applies, and modifies these usages upon which the practice of English government relies.

THE LAW. The most useful brief outlines of English legal development are W. M. Geldart, *Elements of English Law* (London, 1912), Edward Jenks, *Short History of English Law from Earliest Times to 1933* (London, 1934), the same author's *Book of English Law* (3rd edition, London, 1932), Harold Potter, *Historical Introduction to English Law and its Institutions* (London, 1932), C. H. S. Fifoot, *English Law and its Background* (London, 1932), and F. W. Maitland and F. C. Montague, *Sketch of English Legal History* (New York, 1915). More elaborate treatises are A. T. Carter, *History of English Legal Institutions* (London, 1902), and William S. Holdsworth, *History of English Law* (9 vols., London, 1922–1926). Mention should also be made of the last-named author's one volume general *History of English Law* (London, 1932).

THE COURTS. The development and organization of the English courts is discussed in Harold Potter, *Introduction to English Legal History* (3rd edition, London, 1933), A. T. Carter, *History of the English Courts* (London, 1935), while the court procedure, especially in criminal cases, is outlined in G. G. Alexander, *Administration of Justice* (Cambridge, 1915). C. H McIlwain, *The High Court of Parliament and Its Supremacy* (New Haven, 1910) is one of the most valuable books in the field. General descriptions of the British judicial system may be found in C. P. Patterson, *The Administration of Justice in Great Britain* (Austin, Texas, 1936), F. A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), chap. xxvi, and J. A. R. Marriott, *Mechanism of the Modern State* (2 vols., Oxford, 1927), Vol. II, chap. xxii.

Three invaluable volumes are A. V. Dicey, *The Law of the Constitution* (8th edition, London, 1915), the same author's *Law and Public Opinion in England* (Oxford, 1914), and C. K. Allen, *Law in the Making* (revised edition, Oxford, 1930).

A useful small volume for comparative purposes is R. C. K. Ensor, *Courts and Judges in France, Germany and England* (Oxford, 1933).

CHAPTER XVIII

LOCAL GOVERNMENT

The liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors, her sons have learned at their own gates the duties and responsibilities of citizens.—*Blackstone.*

Democracy is said to have an educative value. But the educative value of a democracy depends very largely upon the nature and spirit of its local institutions. The county, the city, and the town are potential schools of citizenship, as both England and America have long since discovered. It is in the arena of local politics that people most easily learn their first lessons in the art of governing themselves. Until you learn to govern, or be governed by, your own neighbors it is futile to expect that you can successfully govern people afar off. The complications and difficulties of government increase as the square of the distance.

THE IMPORTANCE OF LOCAL INSTITUTIONS.

The English system of local government is the result of a long evolution, for the most part unguided and unplanned. There were shires, hundreds, townships, and boroughs in Saxon times, each with its own local authorities. After the Norman conquest the shires became counties, the hundreds disappeared, the townships passed for the most part into the hands of feudal lords and became manors, while the boroughs eventually secured their freedom and became chartered municipalities. Meanwhile a new unit of local administration, fostered by the church and virtually taking the place of the old township, came into being and ultimately attained some importance. This was the parish, with its voluntary meeting of the parishioners presided over by the parish priest.[1] Originally the parish meeting dealt only with church affairs but it gradually acquired some civil functions as well. It was the forerunner of the town meeting in the New England colonies.

A WORD ABOUT ORIGINS.

At the close of the middle ages there remained, therefore, three

[1] After the Reformation he became known as the parson or rector.

principal areas of local government in England,—the county, the borough, and the parish. The administrative work of the county was entrusted to officials known as justices of the peace whose functions were originally those of peace officers but who proved to be convenient authorities for supervising many matters of purely civil administration such as the building of roads and bridges, the maintenance of public order, and the care of the poor. These justices were appointed by the crown. The boroughs or chartered towns were governed, in the main, by close corporations. Originally all the freemen of the borough had a voice in its government. But the lists of freemen were gradually narrowed until only a very small fraction of the inhabitants were entitled to a share in choosing the borough officials. These officials usually consisted of a mayor, aldermen, and common councillors.

LOCAL AREAS AT THE CLOSE OF THE MIDDLE AGES.

Such, in thumbnail sketch, was the organization of English local government during the Tudor, Stuart, and Hanoverian periods. It came down, practically unaltered, into the nineteenth century. In the course of this long interval much of its earlier democracy was sapped away; but the spirit of local self-government was never wholly extinguished. For years, during the Stuart period, the king ruled without a parliament. There were no parliamentary elections. But there were local elections, as before. In the boroughs and the parishes the freemen and the ratepayers continued to choose their own officers and thus keep alive the spark of English democracy.

Until the Industrial Revolution changed the face of England in the closing decades of the eighteenth century this scheme of government served tolerably well. There was no great popular dissatisfaction with it. But the transformation that was wrought by the coming of the factory system soon rendered it obsolete. New industrial towns grew up, almost overnight. The woolen mills gave many of the older boroughs a new lease of life, doubling and redoubling their populations within a few years.

EFFECTS OF THE INDUSTRIAL REVOLUTION ON LOCAL INSTITUTIONS.

Soon these throbbing centers of industry cried out for better police protection, better roads, better sanitation. They made demands which the old local authorities were unable to meet. So appeal was made to parliament,—and parliament, instead of replacing the old authorities, merely devised some new administrative machinery and added it on.

THE CREATION OF NEW LOCAL DISTRICTS.

Local improvement districts were carved out, overlapping boroughs or parts of boroughs. The authorities of these districts undertook the improvement of highways and sanitation which the officials of the boroughs had neglected. Dissatisfaction with the administration of poor relief in the parishes, again, inspired the creation of poor law unions, with elective officers (known as guardians) in charge of them. This practice of multiplying local improvement districts was the most significant feature in the development of English local government during the early years of the nineteenth century. And rather curiously it is also one of the most significant features in the development of American local administration today—just a century later.[1]

THE CHAOS OF LOCAL AREAS.

Now all this resulted in a veritable chaos of local areas, authorities, and jurisdictions. There were justices of the peace, overseers, guardians, vestrymen, churchwardens, mayors, aldermen, councilmen, and commissioners of a dozen sorts. There were borough rates, poor rates, school rates, sanitary rates—all levied periodically upon the bewildered taxpayer. In 1883 it was estimated that there were more than twenty-seven thousand different local authorities in England and that eighteen different kinds of local taxation were being levied on the people. The jungle of jurisdictions had become so dense that nobody could find his way through it. Yet the national authorities were reluctant to take the reform of local government in hand and make a job of it, for parliament has always disliked to reconstruct anything from top to bottom at one stroke. With characteristic caution, therefore, they went at the work piecemeal.

THE ERA OF REFORM.

A beginning was made with the boroughs because they were the areas most urgently in need of reform. After an elaborate investigation parliament enacted in 1835 the Municipal Corporations Act which gave the boroughs (or cities) of England the general scheme of local government which they retain today.[2] Many years later parliament took up the problem of county government. The Local Government Act of 1888 reorganized county administration in England, notably by transferring the admininistrative powers theretofore exercised by the

[1] On this point see the author's *Government of the United States* (4th edition, New York, 1936), pp. 747–748.

[2] The difference between a borough and a city is of no political consequence. Chartered municipalities of whatever size are boroughs; but certain boroughs (by reason of their being the seat of a bishopric, or for some other reason) are entitled to call themselves cities.

justices of the peace to elective county councils. Then, in 1894, came the District and Parish Councils Act which swept away most of the multifarious special districts (such as highway, burial, sanitary, and local improvement districts) and provided for the creation of new, unified, local areas in their place. These new areas are known as urban districts and rural districts. In 1929 another statute made it possible to combine or abolish a large number of these districts. It also made new arrangements for granting the local authorities financial assistance from the national treasury.[1] Finally, in 1933, a comprehensive local government act consolidated into a single statute the powers and functions of the various local authorities. The framers of this act used the opportunity to eliminate many overlappings and anomalies which had accumulated during the preceding hundred years.[2]

THE FIVE LANDMARKS OF REFORM.

These, then, are the five landmarks of reform in English local government, the Acts of 1835, 1888, 1894, 1929, and 1933. Between them they completely reconstructed the old system of pre-reform days. It need scarcely be added, however, that several other important statutes dealing with the various special phases of local government have been put through parliament during the past forty years.

LOCAL AREAS TODAY—FIVE OF THEM.

As a result of this consolidating process there are now five principal areas of local government in England, namely, the county, the borough, the urban district, the rural district, and the parish. The scheme of division may be briefly explained as follows: The whole country is first mapped off into administrative counties. Within these counties are urban and rural districts, the former being more densely populated than the latter. These districts are further divided into urban and rural parishes for the handling of neighborhood affairs. Any area which has received a municipal charter is a borough, and the larger boroughs are known as county boroughs because they virtually form administrative counties by themselves. London, as will be seen later, has a special government of its own.

COUNTY GOVERNMENT

The county is the largest local government division, but the term county is used by Englishmen in two senses. First there are

[1] See *below*, p. 325.

[2] For a full discussion see D. Meston, *The Local Government Act, 1933* (London, 1933).

the historical English counties, descendants of the Saxon shires, with their ancient boundaries still unchanged. There are fifty-two of them, but since 1888 they have not served as areas of local administration. They still form constituencies for the election of members to parliament, however, and serve as areas of judicial administration with their justices of the peace. Each of these historical counties, moreover, has a lord lieutenant whose position has now become an altogether honorary one and the old county still serves as a geographical basis of English social life. But there is no county council or other governing organ in any of them.

1. THE COUNTY:

(a) THE HISTORIC COUNTY.

Much more important from a governmental point of view is the administrative county. There are sixty-two of these. In most cases they are identical in area with the historic counties, but in a few they are not. The administrative county of London, for example, cuts into four historical counties. Within most of the administrative counties there are one or more county boroughs, as they are called. These are urban municipalities which are exempted from the jurisdiction of the counties within which they happen to be situated. There are eighty-three of them, but during the past ten years no new ones have been created.

(b) THE ADMINISTRATIVE COUNTY.

The governing organ of the administrative county is a county council consisting of a chairman, aldermen, and councillors. The councillors are elected by the voters, one councillor from each of the election districts into which the county is divided. Their term is three years. The suffrage qualifications are the same as those established for municipal elections, as explained in an earlier chapter.[1] The number of councillors varies according to the population of the county. The aldermen are not directly elected by the people but are chosen by the councillors. When the councillors have been elected, they choose one third of their number to be aldermen, in other words if there are sixty councillors, they add twenty aldermen to the council. They may choose these aldermen either from their own ranks or from outside. When they choose from their own ranks special elections are then held to fill the vacancies. The county aldermen hold office for a double term, that is, for six years, but one half of them retire every three years. Councillors

THE GOVERNING ORGAN OF AN ADMINISTRATIVE COUNTY.

[1] *Above*, p. 168.

and aldermen sit together in the same body, and have exactly the same voting power. There is no separation of functions or authority: it is merely that the alderman has a longer term than the councillor, and a title that gives a little more prestige. The whole council, aldermen and councillors together, elects a county chairman, usually from its own membership but not necessarily so.

A county council meets regularly four times a year. Its powers are extensive and varied. It supervises the work of the rural district councils; is responsible for the upkeep of main roads and bridges; has some duties with reference to county policing; maintains asylums, reformatories, industrial schools, and other county buildings; performs various functions in connection with the system of old age pensions and is the chief educational authority for the county.[1] Most of its work is done through standing committees, such as committees on education, on public health and housing, on finance, and on old age pensions.

THEIR POWERS.

The county councils and their committees do not usually concern themselves with the routine work of administration, but only with questions of general policy. The routine is handled by a permanent staff of county officials, chosen on a non-political basis. This staff includes a county clerk, treasurer, surveyor (who has charge of highway construction), health officer, and various other functionaries. They are chosen by the county council, but are not under civil service rules, and (with a few exceptions) may be removed by the council at any time[2] In practice, however, they are chosen on their personal and professional merits, and they are never removed on political grounds. The efficiency of county administration in England contrasts rather sharply with its notorious inefficiency and wastefulness in many parts of the United States. The reason is partly to be found in the fact that the administrative work of the English county is entrusted

COMMITTEES AND COUNTY OFFICIALS.

[1] It should not be understood, however, that the county council has immediate charge of all these things. Its police functions, for example, are performed through a standing joint committee, the members of which are selected in part by the county council and in part by the court of quarter sessions (see *above*, p. 305). This committee is practically independent but depends upon the county council for a portion of its funds.

[2] The chief exceptions are the health officer, who, if he be a "whole time" official, cannot ordinarily be removed except with the consent of the national ministry of health. To remove a county surveyor the consent of the ministry of transport must be obtained if the county council has accepted a grant from that ministry toward the payment of his salary.

to men who are chosen for their competence and do not have to play politics in order to hold their jobs from year to year.

A county borough does not have a county council. The work of local government is performed by its regular borough council, a body which will be described a little later. Within the boundaries of a county borough the regular county officials have nothing to do; their functions are taken over by the borough authorities. This is quite a different arrangement from the one usually found in the United States where county officers continue to have jurisdiction over various matters within the largest cities. Officials of five different counties, for example, exercise authority within New York City.

2. THE RURAL DISTRICT.

Within each administrative county the old rural parishes are now grouped into rural districts (more than 600 of them), each district with a council elected by the voters. These councils deal with certain matters of sanitation, water supply, and public health—the last more particularly. They also have charge of minor roads, grant certain licenses, and have an assortment of miscellaneous functions. The English rural district corresponds in a general way to the township in the middle western American states. Its importance is gradually diminishing as England ceases to be a rural country.

3. THE URBAN DISTRICT.

Whenever any part of an administrative county becomes thickly settled (and hence has special needs in the way of sanitation, water supply, health protection, and the like), the county council has power to organize the area into an urban district. Thereupon the inhabitants elect an urban district council made up of at least one councillor for each parish within the district. There are no aldermen in district councils, but the council elects its own chairman and may choose him from outside its own membership if it so desires The urban district council has a variety of local powers in matters of minor highways, housing, sanitation, public health, and licensing, its authority being somewhat more extensive than that of a rural district council. There are about 700 of these urban districts in England and Wales.

CITY GOVERNMENT

This brings us to the organization and work of the English borough. A borough, or city, is an urban district that has received a municipal charter. There are about 275 of these boroughs in all, ranging from small places with a few thousand population to great indus-

trial communities like Huddersfield and West Ham. Their government consists of a single organ, namely, the borough council (or town council as it is more commonly called). This council is composed of a mayor, aldermen, and councillors, all sitting together. The councillors are elected by popular vote for a three-year term. The larger boroughs are divided into wards and the councillors are chosen under the ward system. Nominations for the council may be made by any ten qualified voters and the election is by secret ballot without party designations. The absence of party designations does not mean, however, that party lines are disregarded in borough elections. In most of the larger boroughs these lines are closely drawn, although not so rigidly as in national elections.

4 THE BOROUGH.

The councillors, after election, choose aldermen to the extent of one third of their own number.[1] They can be chosen from the ranks of the councillors or from outside as the council may prefer. When councillors are chosen to be aldermen the vacancies are filled at a special election. The aldermen hold office for six years but sit with the councillors and have no special privileges. Every member of the council, whether he be a councillor or an alderman, has an equal vote on all questions. By reason of their longer terms and greater experience, however, the aldermen provide the council with a steadying influence which on the whole has been helpful.

BOROUGH COUNCILS.

The mayor of an English city is chosen by the council, that is, by the aldermen and councillors sitting together. Here again the council has complete freedom to choose from its own membership or from outside. Sometimes it goes outside, but not usually. The mayor holds office for a single year and may be reëlected. He is the presiding officer of the council and is entitled to vote on all questions, but he has no executive authority. He makes no appointments, and the council's resolutions do not need his approval. He has no veto power like the American mayor. His position is largely one of honor and in most cases he receives no salary. An allowance is made for official expenses, but it is usually small. It has sometimes been said that a wealthy peer makes an ideal mayor because social rather than executive leadership is what the office demands. All this contrasts

THE MAYOR.

[1] Those aldermen who "hold over," that is, who have three more years to serve, also vote in making this choice.

very sharply with the office of the mayor in the United States.

In England the council forms the real pivot of city government.[1] There is no division of power between the executive and legislative branches of local administration, for the council is the executive and legislative authority combined. It adopts the by-laws, determines the local tax rate, prepares and votes the budget, appoints all officials, and supervises the work of the municipal departments such as streets, police and fire protections, health, sanitation, and schools. A large part of its work is done through committees. There is the watch committee, for example, which has charge of police, and the education committee in charge of schools. These committees for the most part do not have any final power, but merely transmit their recommendations to the whole council, which makes the ultimate decisions.

POWERS OF THE COUNCIL.

ITS COMMITTEES.

Laymen govern the English city, therefore, even as they control the course of city government in the United States. But with this difference, that in England they work more closely in coöperation with experts and are more amenable to professional advice. The council committee relies on the advice of men who have technical knowledge. One reason for this may be found in the fact that the council is itself responsible for the selection of these men. It appoints the entire administrative staff, including the town clerk, treasurer, chief constable, borough engineer, medical officer of health—the heads of departments as we call them in America. These officers are not named by the mayor, as with us, nor are they selected by civil service competition.

LAYMEN AND EXPERTS.

The council is free to choose whom it will, provided the appointee has the general qualifications laid down by law. When, therefore, a vacancy occurs in one of these positions the appropriate committee of the council receives applications for it. After considering the merits of these applications it recommends to the whole council the applicant who seems best qualified for the post, and this recommendation is practically always accepted. With a few exceptions, moreover, the council can dismiss an official at any time. In other words the administrative officials of English cities usually are not chosen under

HOW BOROUGH OFFICIALS ARE CHOSEN.

[1] Two useful books on the council are E. D. Simon, *A City Council from Within* (London, 1926), and C. R. Atlee and W. A. Robson, *The Town Councillor* (London, 1925).

civil service rules, as we understand them, nor are they given civil service protection against removal. They are in fact permanent officials, but in most cases without any legal guarantee of permanence. This security of tenure, which rests on traditions, not upon laws, is perhaps the most outstanding feature of English municipal government and the one which contrasts most strongly with the situation in American cities.

CENTRAL SUPERVISION OF LOCAL GOVERNMENT

RELATION OF CENTRAL TO LOCAL GOVERNMENT IN ENGLAND.

How much home rule does an English city have? Is it left to manage its affairs in its own way, or is it subject to strict supervision by the national government? The answer is this: It has less home rule than the American city, but more of it than one usually finds in the cities of Continental Europe. Central control of English local government has been expanding steadily, moreover, and its expansion affords a lesson for the friends of municipal home rule in the United States.

THE PROCESS THROUGH WHICH THIS CENTRAL CONTROL OF ENGLISH CITIES HAS DEVELOPED: GRANTS-IN-AID.

Infringements upon local self-government are never popular in democratic countries, hence they have to be disguised. The usual method of masking them is to offer the cities something for nothing, such as grants-in-aid or subsidies from the central treasury. That is the main channel through which central control of municipal government has been developing in England. The national authorities, with a show of generosity, offer to help the counties or boroughs with part of their expenditures. It agrees to pay a portion of what it costs each city to maintain the local police department, for example. Then comes a regular inspection of the police by national inspectors to see that the government's contribution is being properly spent. This inspection discloses weak spots and the next step is to provide (as was done in the Police Act of 1919) that the central government shall have power to frame and enforce regulations relating to the organization, pay, clothing, pensions, and housing of municipal police. Or the national government, to promote the public health, offers to defray a portion of the local expenditures. Then, by an act of parliament in 1929, it provides that if surveys by national health officers show any local health service to be deficient the grant may be withdrawn. In other words the grant-in-aid becomes a

prelude to inspection; then it leads to the imposition of uniform national standards upon the local authorities. As one English writer remarks, "The inspectors do not merely see and hear on behalf of the central authority; they often speak and even act for it."[1]

Prior to the Local Government Act of 1929 the national government in England gave subsidies to the local authorities for designated purposes—police, schools, roads, housing, health, and so on. But this statute abolished some of these separate grants and provided that a large fund should be annually distributed according to a general formula, with no specification of the amounts to be expended for particular purposes. This new arrangement makes it possible for the central government to withhold the entire grant-in-aid, or a portion of it, if there is dissatisfaction with certain branches of local administration.

The county, city, town, or other municipality which accepts a regular subsidy from a national or state government is starting on the path to political subordination. To safeguard control over its own affairs it must be willing to pay its own way. England, a half century ago, was the classic land of local self-determination. Today there are at least a half dozen national agencies which exercise supervisory jurisdiction over the affairs of English cities, namely, the ministry of health, the home office, the board of education, the ministry of transport, the board of trade, and the ministry of agriculture.

THE CHIEF ORGANS OF SUPERVISION.

The ministry of health has general control over poor relief, water supply, sanitation, public health in general, and the approval of local borrowing in certain instances. The home office has surveillance over local police administration and is responsible for the inspection of factories and mines. The board of education, as its name indicates, is concerned with the general oversight of all local schools which are supported by public funds in whole or in part. The ministry of transport has supervisory jurisdiction over tramways or street railways, ferries, docks, and harbors. Gas supply is nominally under the board of trade although most of the control, so far as gas plants operated by the municipal authorities are concerned, is exercised by the ministry of health. Electric lighting comes within the purview of electricity commissioners in the ministry of transport. The ministry of agriculture and fisheries has supervisory powers in relation to markets.

Thus the local authorities have to deal not with one central department but with many. And the amount of supervisory juris-

[1] Herman Finer, *English Local Government* (London, 1933), p. 325.

diction which these several departments possess is not in all cases precisely defined. In some cases two departments share different portions of the same task. The board of trade, for example, has to do with the development of water power, while the ministry of health deals with water supply. This distinction is quite logical, of course, inasmuch as the one is a matter of industry and the other touches the public health; but the parcelling of jurisdiction in this way is confusing. It differs from the practice in most of the American states where the supervision of all public utilities (water, gas, electricity, street railways, telephone lines, and even motor busses) has been concentrated in the hands of a single body, commonly called a public utilities commission.

EXTENT TO WHICH SUPERVISION IS APPLIED.

In no case, it should be pointed out, is the work of local administration directly undertaken by the national authorities in England. They merely advise, inspect, regulate, give approval, or withhold approval. The general laws provide, in many instances, that the county, borough, district, or parish authorities may do certain things with the approval of the appropriate national department. They also provide, very frequently, that the central department may make rules and regulations for the guidance of the local authorities. The latter resent this paternalism but there seems to be no way of avoiding it, especially if the national treasury contributes part of the cost. And in any case, under modern urban conditions, it is hardly practicable to allow the local authorities complete freedom in matters affecting public health, poor relief, education, and police protection. These things, from their very nature, must be handled with a certain amount of uniformity throughout the country. The massing of people into great cities is bound to bring some measure of centralized control, no matter how strong the tradition of local self-government may be. It is doing this in the United States as well as in England.

ENGLISH AND AMERICAN METHODS OF CENTRALIZED CONTROL COMPARED.

But the growth of central control in England has taken a different slant from that which it is following in America. Central control over local government in England is *administrative* in character and hence flexible. In the United States it is chiefly *legislative*, and hence more rigid. The English plan is to provide that some central board or bureau shall determine whether local authorities may do this or that. The American plan is to settle the matter by a general law rather than by leaving it to administrative discretion.

And of course the discretion of a board or official is more elastic than the provisions of a statute can possibly be. When a law, for example, provides that all county commissioners shall establish and maintain public hospitals, it gives them no leeway. It treats all alike, which is in keeping with the American theory of "a government of laws, not of men." But the fact is that all counties are not alike in their size, needs, or problems. To treat them alike means injustice to some. In England, under the policy of administrative control, they are not made subject to uniform rules laid down by law but are left to be dealt with as individual problems.

The essential difference between English and American methods of central control over local government may be made clearer, perhaps, by a couple of illustrations. Take the matter of municipal borrowing. Many of the American states have fixed limits on the amount of indebtedness that their cities may incur. Some of them have put these limits in their state constitutions; others have established them by state law. In either case the usual provision is that a city may borrow up to a certain percentage of its assessed valuation and no more. It may borrow as it pleases up to this point, without getting the consent of any state authority. But when it reaches the limit it must stop. This, of course, is a clumsy and inflexible way of keeping cities from going too far into debt. It makes borrowing too easy until the limit is reached; then it makes borrowing almost impossible. The result is that some cities have wasted their borrowing power on unessential things and have then been forced to do without desirable improvements when the limit has been reached.

AN ILLUSTRATION: MUNICIPAL BORROWING IN THE UNITED STATES.

But in England when a city wants to borrow money it does not have to reckon with any fixed debt-limit. It cannot borrow a single shilling until it has first obtained approval, either from parliament by special act, or from the appropriate central department. In most cases the approval must be asked by the local authorities, whereupon the officials of the ministry investigate not only the financial resources of the city but the merits of the particular proposal. After the investigation has been concluded, a report is made and the central authorities then approve or disapprove the application.[1]

NO MUNICIPAL DEBT-LIMITS IN ENGLAND.

[1] A beginning has been made along this same line in a few American states notably in Indiana where a state board of tax commissioners has been given

Take another illustration. In America the laws of some states allow cities to own and operate certain public utilities such as gas plants, electric lighting plants, and street railways. In other states the laws do not permit this, or at any rate make it extremely difficult for cities to embark on commercial ventures of any kind. Such legal restrictions make no allowance for the fact that some cities may have good reason for embarking on a policy of municipal ownership while others have not. In England the system is more flexible because the laws merely provide that municipalities may own and operate their public utilities, or may extend those that they already own, provided in each case that the consent of the appropriate national department is first obtained.

ANOTHER ILLUSTRATION: MUNICIPAL OWNERSHIP.

The advantages of administrative supervision, as compared with legislative control, are beyond question. The former is much more effective in achieving the desired end. It saves the time of the lawmaking body. But it would not be practicable, on any broad scale, under the American plan of government. A system of administrative control postulates the responsibility of the administration to the legislature. In England this responsibility exists, for all the central departments are the agents of parliament and accountable to it. But in the United States the administrative authorities are not the agents of the legislature. Most of them are appointed by the governor, who, in turn, is not under the legislature's control. The state legislatures have no agencies to whom they can delegate powers and from whom they can exact a continuous responsibility For that reason American state legislatures have kept the supervision of local government in their own hands, and have exercised it in the only way open to them, namely, by enacting laws. The English system of administrative supervision has been widely praised, and it is deserving of praise; but it would not be workable in the United States so long as we hold to the system of checks and balances upon which the whole structure of American government is built.

WHY THE ENGLISH PLAN WOULD NOT BE PRACTICABLE IN THE UNITED STATES.

Writers speak of the English "system" of central control, but it can hardly be called a system. It is not systematic. It has no uniformity. It has grown by accretion. From time to time it has been

power, on petition of any ten taxpayers, to review any proposed municipal bond issue and veto the proposal if it finds good reason for doing so.

partially reorganized and some of the twists taken out of it; but it has none of the coherence that marks the French system, for example.[1] It embodies no rigid philosophy of government. The English habit has been to let things alone until they can be let alone no longer, then to make no more repairs than are urgently required. To use a homely metaphor they do not tear down the old house and build a new one with all modern conveniences. They merely patch the roof, repair cracks in the walls, add a wing here or a gable there, put in an extra window, close up an unused door—and so on, decade after decade, until not much semblance of the old structure remains.

A CONCLUDING WORD ON THE ENGLISH PRACTICE OF CENTRAL SUPERVISION.

THE GOVERNMENT OF LONDON

Something should be said about the government of London, for this world metropolis has bulked large in English political life for nearly a thousand years. But what is London? The average American is confused, as well he may be, when he reads that the city of London had a population of about 14,000 at the last census. This statement is literally correct, but of no real consequence because the "city" is only a very small part of London. The administrative county of London contains over four million people, while metropolitan London, commonly known as Greater London, contains more than eight million. It is Greater London to which Englishmen refer when they contend that it leads Greater New York in the race for primacy among the world's cities.

THE THREE LONDONS.

The city of London is merely the ancient core of the modern leviathan, occupying an area of about one square mile. It is the historic entity which began as a Celtic town and became successively a Roman *civitas*, a Saxon borough, a Norman city. It has remained to this day with its ancient boundaries virtually unchanged and its old form of municipal government unaltered for several centuries. The area of the "city" is occupied by banks, warehouses, and public buildings,

THE CITY OF LONDON.

[1] See *below*, Chapter XXXI. It ought to be mentioned that the description of local institutions, given in the foregoing pages, does not apply to Scotland and Ireland. They have their own areas and organs of local government which differ considerably in detail, but not in general arrangement, from those of England. The same is true of India and the overseas dominions, the difference in these cases being much more extensive.

which explains why it has a resident or "night" population of only about fourteen thousand. In the day hours, however, its streets are thronged by hundreds of thousands who come into it to do business.

Around this historic municipality there grew up, in the course of time, a number of satellite communities which were organized as parishes, each with its own government. Eventually there were more than a hundred of these parishes, together with the city of Westminster, all solidly built up and forming a great circle. This was the situation in 1888 when parliament was asked to intervene and consolidate the entire metropolis. It attempted to solve the problem by creating the administrative county of London with an area of over 100 square miles. Provision was made for a county council with extensive powers to serve as the chief governing organ of the new administrative county. A little later the county of London was divided into metropolitan boroughs, each having a limited range of local self-government.

THE SATELLITES OF THE OLD CITY.

THE ADMINISTRATIVE COUNTY OF LONDON.

Finally, there is the London metropolitan police district, or metropolitan London, which covers about 700 square miles. It is not a regular municipality but a district for police purposes only. It has no elective governing officials and its inhabitants do not constitute a municipal corporation. Yet people usually call themselves Londoners if they live within its boundaries, which means that one Englishman in every five is a Londoner on that basis of reckoning. "When a man is tired of London," said Dr. Samuel Johnson, "he is tired of life; for there is in London all that life can afford."

METROPOLITAN LONDON.

The city of London is a corporation made up of the freemen of the city; that is, of ratepayers who pay a small fee for the privilege of having their names inscribed on the rolls. This body of freemen governs the city through a lord mayor and three councils (or courts, as they are officially called); namely, the court of aldermen, the court of common council, and the court of common hall.

HOW THE "CITY" IS GOVERNED.

To explain how these three councils are organized, and what their respective powers are, would take more space than can be allotted here.[1] Suffice it to say that both aldermen and common

[1] For the details see the author's *Government of European Cities* (revised edition, New York, 1927), chap. ix.

councillors are elected by wards, while the court of common hall is a sort of town meeting. Most of the power rests with the common council, which manages all the municipal services through its committees; but the lord mayor of London is chosen by the court of common hall from among the senior aldermen who have served in the office of sheriff.

THE LORD MAYOR OF LONDON.

The lord mayor of London has no independent powers. His office is purely an honorary one. He appoints no city officials and performs no executive functions. He merely presides at meetings of the three councils and represents the city on occasions of ceremony. At his own expense he provides a stately banquet and a gorgeous pageant—the one for the dignitaries of the city and the other for the people. He is always knighted by the king during his term, if he has not already attained that rank. The salary attached to the office is generous (ten thousand pounds a year), but all of it, and more, goes for official entertainments.

HOW THE COUNTY OF LONDON IS GOVERNED.

The administrative county of London is governed by a county council made up of one hundred and twenty-four councillors and twenty aldermen. The councillors are elected by popular vote for three years, the suffrage being the same as in other municipal elections. The aldermen are chosen by the councillors, either from within their own ranks or from outside, and serve for six years. Councillors and aldermen sit together and have the same voting power. Together they elect each year a chairman of the council and may choose him from outside the council's membership. The practice has been to elect a new chairman each year, and as a rule the choice has been made from within the council's membership.

COUNCIL ELECTIONS.

Save for a lull during the war, the London County Council elections have been stubbornly contested. There are three political parties in London politics. They call themselves Municipal Reformers, Progressives, and Labor, but they are virtually branches of the three national parties. The Municipal Reformers in London are largely Conservatives in national politics; the Progressives are mostly Liberals. It is sometimes said that the national parties, as such, do not figure in London elections, and in a narrow sense that is true; at any rate it was true until the rise of the Labor party. But in a broad sense the national party lines have always held fairly well in

London elections, and in recent years they have been considerably tightened.

The powers given to the London County Council are extensive in scope. It is the sole authority with respect to main sewers and sewage disposal, fire protection, tunnels and ferries, and bridges (except those in the city). It has charge of those street improvements which are metropolitan in character. Subject to the approval of the ministry of health it makes public health regulations, but the enforcement of these regulations is left largely to the authorities of the metropolitan boroughs (see *below*). The county council also has large powers with respect to the construction and operation of street railways, and it has undertaken several great rehousing schemes, involving the demolition of slum areas and the erection of workmen's dwellings. It is responsible for the maintenance of the larger London parks (except crown parks) and for providing public recreation. It has comprehensive functions in the matter of education, including elementary, secondary, and technical schools. Finally, the council has a long list of miscellaneous work to do—such as the licensing of theaters, the regulation and inspection of lodging houses, the administration of the building laws, and the maintenance of various institutions for the unfortunate.

POWERS OF THE L.C.C.

The administrative county of London has no mayor and no official corresponding to a mayor. Its chairman is not an executive officer, for although he presides at council meetings he has no other powers. The council itself is the executive authority. But since executive functions obviously cannot be performed by so large a body, they are delegated by the council to committees, and these committees devolve a large part of the work on the permanent officials. The higher officials in this staff are appointed by the council at its discretion, but the subordinate posts are now filled by civil service competition.

THE COUNTY CHAIRMAN AND THE PERMANENT OFFICIALS.

Mention has been made of the metropolitan borough councils which share in the work of London government. The administrative county of London is a federation of boroughs, twenty-eight of them. . These metropolitan boroughs are very unequal in size because an attempt was made to follow the traditional boundaries. Each borough has a local government consisting of mayor, aldermen, and councillors, all sitting together

METROPOLITAN BOROUGHS.

to form a borough council. This council has charge of local street-building, paving, lighting, and cleaning. It also undertakes the construction and maintenance of subsidiary sewers, the enforcement of health regulations, and the building of workmen's dwellings. It may, and often does, own and operate the local electric lighting plant, and it has various other functions of a local character.

THEIR POWERS.

The county council and the borough councils have nothing to do with the policing of London. As for the "city of London" it has its own police. For the great circle surrounding the city there is a metropolitan police force. The metropolitan police district includes the whole county of London and parts of several other counties. At the head of the district is a police commissioner who is appointed by the crown. He has assistant commissioners, appointed like himself. Consisting of over 20,000 men, the metropolitan police force of London is the largest in the world. The commissioner has entire charge of organization and discipline; but the financial administration of the force is entrusted to a receiver, appointed by the crown, who is responsible for the erection and management of all police stations, the awarding of contracts, the purchase of supplies, and for all other matters outside the actual work of preserving law and order.

THE METROPOLITAN POLICE DISTRICT.

These, then, are the chief authorities who govern the three Londons. But only the chief ones: there are literally dozens of others with all sorts of powers and functions. Among urban governments the world over, that of London is by far the most complicated. In its profusion of authorities and jurisdictions the English capital far outmatches New York or Paris, not to speak of Rome or Tokyo. But London is an amazing community in the length and breadth of its area, and in the heights and depths of its population. From Mayfair to Pimlico is not far in distance, but to look at them they seem to be in different worlds. In such a vast and mottled wen of humanity one should hardly expect to find a simple form of government.

HISTORY. Sidney and Beatrice Webb, *English Local Government* (6 vols., London, 1906–1922) is an elaborate historical survey. Josef Redlich and F. W. Hirst, *Local Government in England* (2 vols , London, 1903) is also to a large extent historical. Attention may also be called to E. S. Griffith,

The Modern Development of City Government in the United Kingdom and the United States (2 vols., London, 1927). W. A. Robson, *The Development of Local Government* (London, 1931) gives a more concise outline. Mention should also be made of the volume entitled *A Century of Municipal Progress* by H. J. Laski and others (London, 1935).

GENERAL DESCRIPTIONS. The latest books of this nature are Herman Finer, *English Local Government* (London, 1933), and E. L. Hasluck, *Local Government in England* (Cambridge, 1936). J. P. R. Maud, *Local Government in England* contains a summary account, published in the Home University Library Series (London, 1932). John J. Clarke, *Local Government of the United Kingdom* (10th edition, London, 1936) is useful for special students of the subject and contains a good classified bibliography. There is a considerable discussion of borough (city) government in W. B. Munro, *The Government of European Cities* (revised edition, New York, 1927), pp. 1–190.

LOCAL GOVERNMENT LAW. Publication of the *Encyclopedia of Local Government Law* was begun in 1905 and since that date the material has been kept up to date by periodical supplements. W. I. Jennings, *Principles of Local Government Law* (London, 1931), W. A. Robson, *Law Relating to Local Government* (London, 1930), and H. E. Smith, *Municipal and Local Government Law* (London, 1933) are the best general books on the subject. Current information is given in the *Municipal Year Book*, published annually.

LONDON. The most convenient sources of information concerning the government of the British metropolis are P. A. Harris, *London and Its Government* (revised edition, London, 1933), and H. Morrison, *How Greater London is Governed* (London, 1935), but mention should also be made of Sir Aston Webb's *London of the Future* (New York, 1921). A J. Glasspool, *The Corporation of the City of London* (London, 1924) explains the government of the city. Much interesting material is contained in the *Annual Reports* of the London County Council, and H. Haward, *The London County Council from Within* (London, 1932) gives an interesting account of the L.C.C. by one who has had close contact with it for over forty years.

CHAPTER XIX

SCOTLAND AND IRELAND

All government, indeed every human benefit and enjoyment, and every prudent act, is founded on compromise. Magnanimity in politics is not seldom the truest wisdom; and a great empire and little minds go ill together.—*Edmund Burke.*

SCOTLAND

THE BEGINNINGS OF SCOTLAND.

Scotland, like England, was populated by Celtic tribes when the Romans first landed on the shores of Britain. But the Roman legions never pushed their way into the northern sections of the island and Scotland never became a part of the great Latin empire. Nor did the Saxons, when they came to Britain from across the waters, succeed in conquering all of Scotland. The Scottish highlands continued to be inhabited by people of the Celtic race, although some Saxons worked their way into the lowlands which constituted the southern part of the country. The various tribes or clans of Scotland gradually became united under a monarchy with its capital at Edinburgh. In due course, moreover, parliamentary institutions were developed, not widely different from those of England.[1]

THE ROYAL UNION WITH ENGLAND IN 1603.

Throughout the middle ages and into the modern period Scotland managed to retain her independence. It happened, however, that the royal families of England and Scotland became related by the intermarriage of members who were not immediately in line for either throne. Then, on the death of Queen Elizabeth in 1603, there were no Tudor heirs at hand and the Scottish people had the satisfaction of seeing their own king, James VI, inherit the throne

[1] Wales is commonly called a "principality" but for all governmental purposes it is united with England Edward I, in 1284, formally annexed Wales, but the indigenous Welsh institutions were left in existence for the time being, although English law and legal procedure were partially introduced. It was not until 1535 that Wales was given representation in the House of Commons. Two centuries later (1747) it was made a rule that the mention of England in an act of parliament should be taken to include Wales. The title Prince of Wales, when borne by the king's eldest son, gives him no political authority.

of England.[1] He proceeded to Westminster, took the title of James I, and inaugurated in England the ill-starred dynasty of four Stuart kings. In this way Scotland and England became united under the same line of monarchs, but each retained its own parliament. The same king dealt with one parliament at Edinburgh and with another at Westminster.

This royal union naturally brought the two countries into closer relationship. It stood the strain of the English civil war, the Cromwellian dictatorship, the expulsion of James II, and the succession of the Orange monarchs. Yet it was not regarded as altogether satisfactory by either country. It was a union without unity. The Scots were especially desirous of a share in the industrial and commercial prosperity which England was deriving from the trade with her colonies; they also desired the privilege of freely shipping all their products into the English market. England was not willing to concede either of these things unless Scotland would submit to virtual annexation. So relations once more became strained and in 1704 the Scottish parliament announced that unless something were done it would proceed to choose a monarch of its own.

ITS RESULTS.

To forestall an impending separation, therefore, commissioners from both countries were appointed to reach a common ground. They managed to frame a treaty embodying concessions on both sides, and this treaty was approved in 1707 by the parliaments concerned. Briefly it provided for the organic union of the two countries, under the name of Great Britain, with a single parliament at Westminster. The Scottish parliament was abolished, and Scotland obtained representation in both the House of Lords and the House of Commons. She was permitted to retain her own system of laws and legal procedure, her own religion and local institutions. In return for the abolition of their parliament the Scottish people were granted full freedom of trade with England and with the English colonies. It was a fair bargain; one country obtained political and the other economic advantages. Scotland traded her parliament for pounds, shillings, and pence. She did it with her eyes open. And the Scottish people, on the whole, have not regretted the agreement of 1707. The union ushered in an era of material prosperity which

THE PARLIAMENTARY UNION OF 1707.

[1] James VI was the son of Mary, Queen of Scots, who was a first cousin of Queen Elizabeth.

lasted for a long time and made the southern part of Scotland one of the richest sections of the United Kingdom.

The government of Scotland, as arranged by the Act of 1707, has remained unaltered in its essential features to the present time.

PRESENT GOVERNMENT OF SCOTLAND.

There is a secretary of state for Scotland who has a seat in the British cabinet. Like other members of the cabinet he is chosen by the prime minister. Invariably he is a Scotsman, although there is no legal requirement to this effect. In a general way the secretary is responsible for the supervision of administrative affairs in Scotland, in which work he is assisted by various functionaries and boards, including a lord advocate, an undersecretary for Scotland, a solicitor-general, and other functionaries. All laws passed by the British parliament apply to Scotland unless otherwise stipulated, and many things are uniform in the two countries, as, for example, the systems of national taxation and national defense. On the other hand many things are different, because Scotland retains her own system of civil law and procedure, her own hierarchy of courts, her own ecclesiastical organization, and her own distinctive scheme of local government.

Scotland, as has been said, is represented in the House of Lords by 16 Scottish peers and in the House of Commons by 74 members,

THE REPRESENTATION OF SCOTLAND IN PARLIAMENT.

which is about what the population warrants. In both chambers the Scottish members have exactly the same status as the English, and are eligible for appointment to all ministerial positions As a rule they have been well represented in British ministries, so well, in fact, that their prominence is a matter of frequent remark by outsiders. Scotland has had a larger share in British administration than her population entitles her to have.

On the whole the feeling between these two sections of the United Kingdom has grown increasingly cordial during the period since

SUCCESS OF THE SCOTTISH UNION AND FAILURE OF THE IRISH UNION CONTRASTED.

1707. Various new concessions to Scotland have been made. There has been no general clamor for Scottish home rule, much less for a Scottish republic. Home rule bills have been introduced into the British parliament from time to time but they have never had the united support of the Scottish members. Today there is considerable grumbling about the neglect of Scottish interests at Westminster, but no strong movement to dissolve the partnership such as developed in Southern Ireland. This is the more note-

worthy when one recalls the fact that Saxon and Scot were not on very friendly terms for over five hundred years preceding the union.

The reasons for the difference between Anglo-Scottish and Anglo-Irish relations are not far to seek. Scotland was never conquered by England; she entered the union a free country; her people accepted a changed political status in return for fair compensation. Apart from merely sentimental considerations, Scotland lost nothing by joining with England. No intelligent Scotsman of today contends that his country would now be better off if the treaty of 1707 had been rejected. Ireland went into the union under vastly different circumstances The island was invaded and conquered by English armies; the line of Irish kings was brought to an end by force, and the powers of the Irish parliament reduced to a shadow. This parliament was allowed to continue its existence, but it did not represent the majority of the Irish people and it could do nothing that was not subject to review at Westminster. The union of 1800, moreover, was put through the Irish parliament by political trickery and manipulation. Ireland derived from the union of 1800 no commercial advantages of any account. It was a jug-handled bargain. Ireland gave up her parliament, mere wraith of a parliament that it was, and got nothing in return. Finally, the difference in religious belief made it impossible for this union to work out as the other had done.

REASONS FOR THIS.

IRELAND

Ireland's troubles with England go back a long way before the union of 1800. They are almost primeval. It is not possible to understand the Irish problem, as it stands today, without some knowledge of its antecedents. In no other country, with the possible exception of Poland, are the political conditions of the present so largely a heritage of the past. This past is one long chronicle of friction, suspicion, and hatred. Ireland blames England for it all; and England blames Ireland for most of it. The truth is that both countries have been jointly responsible for Ireland's vicissitudes, in what proportion will doubtless remain a matter of controversy to the end of time.

ANTIQUITY OF THE IRISH PROBLEM.

Ireland, at the dawn of history, was peopled by Celts, the kinsmen of the Scots and of the ancient Britons whom the Saxon invaders

drove out of England. These Celts had not united into a single Irish monarchy but were being governed by several native rulers when Henry II of England crossed the Irish Sea in 1171–1172 and conquered part of the island, more particularly the region around Dublin which thereafter came to be known as The Pale. In this area English law and English judicial procedure were gradually established. There was also some immigration from England to The Pale, but the newcomers quickly became assimilated despite all attempts to prevent this. In due course a parliament was established within The Pale, but its authority was greatly limited at the close of the fifteenth century by a statute known as Poyning's Law. This law provided that all English statutes should apply to Ireland, that the Irish parliament should never be summoned except with the prior consent of the English government, and that when summoned its acts should be subject to the approval of the king in council. Many years later the English parliament followed this with a declaratory act (1720) which asserted its right to legislate for Ireland on any and all matters.

EARLY HISTORY OF IRELAND.

THE PALE.

POYNING'S LAW.

By these and various other measures Irish self-government was reduced to a phantom. Executive authority was vested in a lord deputy, appointed by the crown and not responsible to the Irish parliament. Neither the lord deputy nor his parliament exercised any real authority outside The Pale. In these outer and relatively untamed regions the people gave their allegiance to various local chieftains or "kings" who were often at war with one another but always ready to unite against the English. Irish agriculture was handicapped by this ever-recurring warfare and also by the prohibition of various Irish exports. The exporting of Irish wool was hindered, for example, and when the people set themselves to manufacture their wool into cloth the exporting of cloth was also forbidden (1699).

ECONOMIC HANDICAPS.

Meanwhile various happenings in Ireland accentuated the strained relations between the two countries. During the reign of Henry VIII (1509–1547) England broke relations with the Holy See and became Protestant, while Ireland remained Catholic. This, in itself, widened the breach between the two countries. Then, a little later, the English government undertook to subdue the northern part of the island, and when the people rebelled their lands were confiscated. Early in the reign

THE SETTLEMENT OF ULSTER.

of James I (1611) the great plantation of Ulster was laid out and settled by emigrants from England and Scotland who became possessors of the confiscated lands. As the new settlers were Protestants this action divided the island into two unequal religious camps and laid the foundation for much later bitterness.

Then came the struggle between Charles I and the English parliament. Ireland seized the opportunity to rise in revolt and was almost successful. England was dislodged from all save Dublin. But the day of reckoning was soon to arrive, for when Cromwell felt himself master of England he proceeded to Ireland on a mission of reconquest and retaliation. There he performed his task with a rigor which Ireland has not forgotten to this day. Extreme penalties were imposed upon the island by the English government, enormous tracts of land being taken from their rebellious owners and given to English military officers.

IRELAND AND CROMWELL.

This Cromwellian Settlement was not a settlement at all, for it did not break the spirit of the Irish people but merely left them in a bitterly hostile frame of mind, with a determination to undo the wrong at the first opportunity. Such an opportunity seemed to be at hand in 1689 when James II, having been driven from the English throne, landed in Ireland and called upon the people for aid. Once more all Ireland, except Ulster, responded. But once more it was a bad gamble, for James Stuart proved a frail reed on which to lean the Irish hopes. He and his army were overwhelmed at the Battle of Boyne (1690) and Ireland once more had occasion to learn what *vae victis* meant. The island was now so thoroughly cowed and enfeebled that no more uprisings took place for over a century.

IRELAND AND JAMES II.

THE BOYNE (1690).

During this period of relative peace the attitude of the English authorities softened somewhat. England had troubles of her own in the last quarter of the eighteenth century—troubles in America, in India, and in Europe. The American Revolution also carried its lesson to Westminster. So, in 1782, the English parliament renounced its claim to make laws for Ireland and repealed the restrictions which had been imposed by Poyning's Law. A year later it virtually conceded the supremacy of the Irish parliament and of the Irish courts within their own territorial jurisdiction. This seemed to give Ireland virtual home rule. "Ireland is a nation," cried Henry Grattan in ecstasy.

IRELAND DURING THE EIGHTEENTH CENTURY.

But it was home rule with a query. The English crown continued to be represented in Ireland by a viceroy who, although technically responsible to the Irish parliament, was in reality controlled by the English House of Commons inasmuch as he was a member of the English cabinet. This was a wholly impractical and anomalous arrangement, bound to engender friction as time went on.

Things went along without ruction for a dozen years or more. Ireland began to grow prosperous; her commerce expanded, and her industries showed signs of revival. Then the ill-fortune which has dogged the Irish nation through so many centuries showed its sinister form once more.

IRISH REBELLION OF 1798.

The French Revolution gave Ireland an opportunity which her people could not resist. Not only did it send a wave of republican sentiment over the country but it brought England into a critical war with France. "England's troubles are Ireland's opportunities"—so an old Irish saying goes. Accordingly, the French revolutionists carried their propaganda to Ireland, convinced the people that with England's back to the wall they needed only to strike for deliverance, and swept them into the Irish Rebellion of 1798. England's back may have been to the wall, but her hands proved to be free. The rebellion was crushed in a whirl of reprisals.

THE UNION OF 1801 AND AFTER

Thereupon the English cabinet decided that Ireland should be put under bonds for good behavior. England must take no future chance of being stormed from the rear. Accordingly the prime minister, William Pitt the younger, prepared a plan for the parliamentary union of England and Ireland. An act of union was drafted and was submitted to the Irish parliament for acceptance. Outside of Ulster the public sentiment of Ireland was against the measure, nevertheless by dint of bribery, intimidation, coercive persuasion, and other corrupt practices it was forced through the legislative chambers in Dublin. It is said that Pitt spent nearly a million pounds sterling to get the measure passed. Some members of the Irish parliament got titles, some got lucrative offices, some were bribed outright. In all fairness to Pitt it should be explained that these were the political methods of his time. He was not unfriendly to Ireland and expected that this union would be followed by various conciliatory measures, but he found the English opposition too great.

THE ACT OF UNION.

By the terms of the union the Irish parliament was abolished, and Ireland obtained representation in both Houses at Westminster—twenty-eight members in the House of Lords and one hundred in the House of Commons. Executive authority was to be exercised through a viceroy, representing the crown. As such he was responsible, through the ministry, to the British House of Commons. Irish laws and courts were unaffected by the union, save that the British House of Lords now became the court of last resort. There were almost no economic compensations. The alien landowner continued to possess most of the country. The division of religious sympathies between England and Ireland made cordiality impracticable.

ITS PROVISIONS.

Save for a single flare-up in 1803, however, the Act of Union was followed by more than forty years of relative quiet. Amid the great economic changes which took place during this era, bringing industrial prosperity to the rest of the United Kingdom, the whole of Southern Ireland sat sullen, depressed, subdued. There were some local disorders but they were easily quelled. Daniel O'Connell rose to be the political leader of his people during this period, but he did not control the Irish members in the British House of Commons. Until after 1832 the suffrage was as narrow in Ireland as in England, hence the Irish members did not represent the body of the Irish people. Many of them, as in England, were named by patrons or chosen by close corporations. As the nineteenth century wore on many Irishmen began to emigrate to the United States and to the British colonies, and after the potato famines of 1846–1849 this exodus assumed huge proportions.

THE HALF CENTURY AFTER THE UNION.

THE STRUGGLE FOR HOME RULE

An agitation for the repeal of the union, led by O'Connell, had been set afoot as early as 1841, but for many years it made slow progress because it was associated in the English mind with republicanism and revolution. In 1873, however, an association calling itself the Home Rule League was formed with the avowed aim of securing by peaceful and parliamentary means a reasonable measure of Irish self-determination. This league undertook to secure the election of home-rulers to parliament and under the leadership of Charles Stewart Parnell succeeded in creating an Irish Nationalist party in the House

THE HOME RULE MOVEMENT.

of Commons. The Nationalist party increased its numbers to the point where it eventually held the balance of power, and in 1886 Parnell persuaded Gladstone, the Liberal prime minister, to bring in the first Irish home rule bill.[1]

THE FIRST HOME RULE BILL (1886).

This bill provided for the establishment of an Irish parliament in Dublin, with the right to make laws for Ireland, and to levy taxes except customs duties and excises. Executive power was to remain in the hands of a lord lieutenant, appointed by the crown. All matters of concern to the British empire as a whole, and not to Ireland alone, were to be dealt with by the British parliament. In this parliament Ireland was no longer to be represented although she was to contribute one-seventeenth of all imperial expenses. In other words Ireland was to be taxed without being represented, a provision which gave rise to much criticism.

HOW IT FARED.

This measure did not wholly satisfy the Nationalists, but they supported it. Much less, however, did it satisfy some of Gladstone's followers in England. These anti-home-rule Liberals, calling themselves Liberal-Unionists, bolted Gladstone's leadership, voted against the bill on its second reading, and defeated it in the House of Commons, thus forcing the prime minister to choose between resignation and an appeal to the country. A general election thereupon took place and the Liberals were overwhelmed by the new coalition of Conservatives and Liberal-Unionists. A Unionist ministry under Lord Salisbury then came into power and the first home rule bill went into the wastebasket. But home rule continued to be a burning issue in British politics for the Liberals did not forsake the cause, and at the next general election (1892) they found themselves once more in power, although again dependent upon the Irish Nationalists for a majority in the House.

THE SECOND HOME RULE BILL (1893).

So Gladstone in 1893 brought in his second home rule bill. It differed from its predecessor in some important respects, more particularly in providing that Ireland, besides having a parliament of her own, should be represented by eighty members in the British House of Commons. These members, however, were not to vote on matters concerning England and Scotland, but only on questions in which Ireland

[1] The Nationalists at this time had 83 members in the House of Commons. See *above*, p. 269.

could be shown to have an interest. The Irish members were thus to be in the House on some questions, and out of it on others, hence this arrangement was dubbed the "in and out" provision of the bill. English public opinion did not like this feature. It was looked upon as a menace to the whole system of ministerial responsibility—which in truth it was. A ministry would have a majority in the House of Commons on some questions and no majority on others. Nevertheless the House of Commons passed the bill and sent it to the House of Lords where it was rejected by a large majority. The Liberals did not press the issue farther, because there was lukewarmness in their own ranks, and Mr. Gladstone was presently induced to retire from the leadership. His retirement was followed by a Unionist victory at the polls and for the next ten years the friends of home rule were on the opposition side of the House.

THE THIRD HOME RULE BILL (1912–1914).

But the pendulum of politics eventually swung the other way and the Liberals came back into office. Having in mind what had happened in 1893, they did not bring in the third home rule bill until after they had curbed the powers of the Lords by the Parliament Act of 1911 and had thus made sure that their work would not be undone. The provisions of this third home rule bill stipulated that there should be an Irish parliament of two chambers, representing the whole of Ireland (including Ulster), with jurisdiction over all strictly Irish affairs. Certain matters, such as a military and naval policy, foreign affairs, treaties, and customs duties, were exclusively reserved to the British parliament. The lord lieutenant of Ireland, representing the crown, was to act solely on the advice of the Irish cabinet which, in turn, was to have the confidence of the Irish parliament. This bill went through the Commons in 1912, but was once more rejected by the Lords. Accordingly, under the provisions of the Parliament Act it could not go into force until the expiry of two years, that is to say, until the summer of 1914.[1]

THE ULSTER OPPOSITION.

Meanwhile Ulster came to the front with a threat of armed resistance if her people were subject to the jurisdiction of a Dublin parliament. A strong Unionist organization was formed in Ulster; large numbers of volunteers were enrolled, and there was every indication that the inauguration of home rule in Ireland would be followed by a civil war between Ulster and the rest of the country. But notwithstanding

[1] See *above*, p. 146.

this serious danger the House of Commons gave the home rule bill its last passage over the two-year veto of the Lords.

No sooner had it gone on the statute book in the summer of 1914, however, than Western Europe launched into the World War. At once the friends and the foes of home rule agreed to call a truce on this question. Leaders of all political parties came together and agreed that the Irish question, like all other domestic controversies, should be temporarily shelved in order that the British empire might devote its entire strength to the great struggle. More specifically it was agreed that the home rule act, although finally enacted, should not be put into operation until the close of the war.[1]

OUTBREAK OF THE WORLD WAR.

During the first year of the war little was heard of the Irish question. Ireland was quiet, and when Ireland is quiet there is apt to be some trouble on the way. Although the Nationalist leaders, at the outbreak of hostilities, had pledged Ireland's support to the Allied cause, it soon became apparent that they could not carry the country with them. In Britain's emergency there were many young Irishmen who could see nothing but the best opportunity that had come to Ireland since Napoleon's day. So they urged the striking of a blow for complete independence, for separation from the British empire, for an Irish republic. Obstacles were thrown in the way of enlisting Irishmen for service with the Allies, and secret negotiations with Germany were opened by one of the Irish leaders, Sir Roger Casement. The Germans promised arms, munitions, and money to aid an Irish rebellion.

IRELAND DURING THE WAR.

The driving force in this movement for an Irish republic was the organization known as Sinn Fein.[2] Sinn Fein had been in existence for some years prior to 1914, but had gained relatively few recruits until that year, when the great European conflagration seemed to presage the incoming of a new world order. With mobilizations going on everywhere, Irishmen (particularly young Irishmen) could not resist the contagion. By the thousands, therefore, they deserted the Nationalist or home rule party and enrolled themselves in the more

THE SINN FEIN MOVEMENT.

[1] There was also an understanding that before putting the measure into effect the ministry would secure from parliament some concession to the desires of Ulster.

[2] The words Sinn Fein (pronounced "Shin Fane") are old Irish for "ourselves alone."

radical ranks of Sinn Fein. The organization grew to large proportions and its leaders only awaited a propitious hour to strike.

As it turned out, the hotheads got beyond control and struck too soon. Before there was any certainty of German coöperation an insurrection broke loose in Dublin and the Irish Republic was proclaimed (Easter Monday, 1916). A hopeless venture from the start, the Easter rebellion was localized and put down within a few days. Several of the leaders were executed. But the quelling of this rebellion did not settle anything and Ireland remained on edge until the end of the World War. At the general election which followed the armistice the country showed its temper by electing seventy-three Sinn Fein members to the British House of Commons and pledging them not to take their seats. Instead they were instructed to assemble in Dublin as a parliament of the Irish Republic.

THE EASTER REBELLION (1916).

These ongoings made it apparent that the Irish question could not be settled by putting into operation the home rule act of 1914. Ulster did not want it; neither did the rest of the country. The former objected that the act went too far, the latter that it did not go far enough. Early in 1920, therefore, the British prime minister, Mr. Lloyd George, laid before parliament a new measure intended to supersede the still-dormant home rule act of 1914. The outstanding feature of this new measure was its provision for two separate governments in Ireland, one for six counties in Ulster and the other for the remaining twenty-six counties of Ireland. Each of these two areas was to have its own parliament, the Ulster parliament sitting in Belfast and the parliament of Southern Ireland in Dublin. Each parliament was to have the usual powers within its own field of jurisdiction. In addition there was to be a federal council made up of forty members, twenty elected by each of these two Irish parliaments. This federal council was to have such powers in relation to all-Irish affairs as the two Irish parliaments might agree to bestow upon it. Certain important matters, however, were reserved for the exclusive jurisdiction of the British government. Among these were national defense and foreign relations.[1]

THE FOURTH HOME RULE MEASURE (1920).

This new measure passed parliament without mishap and was

[1] The significant portions of this Act are printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (1925), chap. viii.

accepted by the people of the six Ulster counties who proceeded to set up their new government. In the southern counties, however, the popular opposition to the scheme was so intense that no progress could be made. The people would neither elect members to the proposed parliament, nor carry suits to the courts, nor obey any order of the British authorities. Instead the masses of the people adhered in their allegiance to the Irish Republic, obeyed the orders of its officials, and carried their controversies to its own courts. For a time the English government tried coercion, sending large bodies of troops to Ireland in an endeavor to assert its authority. Guerrilla warfare ensued over a large portion of the country, with much destruction of life and property. The titular officials of the republic were kept "on the run"; the republican courts were broken up whenever found; the whole island was in a turmoil. But in due season the British government became convinced that Ireland could not be coerced, at any rate not without an enormous outlay, and the Irish leaders also reached the conclusion that Britain could not be expelled. Then, and only then, did the time become ripe for negotiations on a give-and-take basis. It had taken nearly seven hundred years to bring the two countries into this frame of mind.[1]

SOUTHERN IRELAND'S ACTIVE RESISTANCE.

THE IRISH FREE STATE

So negotiations for a treaty began in 1921. Certain members of the British cabinet and an equal number of delegates representing the Dail Eireann, or de facto parliament of the Irish Republic, undertook the work of reaching a compromise, and eventually they were able to agree upon the draft of a treaty. This agreement was duly submitted to the British parliament and to the Dail, by both of which it was ratified. It provided, among other things, that an Irish constitution should be prepared and that when this constitution had been accepted by both sides it should go into effect. The constitution was duly framed by a group of Irish leaders; it was then ratified by a newly elected Dail Eireann, and went into effect on December 6, 1922.[2]

THE TREATY OF 1921 AND THE NEW IRISH CONSTITUTION.

[1] The story of these years 1916–1921 is fully told in W. A. Phillips, *The Revolution in Ireland* (2nd edition, London 1926)

[2] A copy of this document may be found in Darrell Figgis, *The Irish Constitution* (Dublin, 1923).



THE IRISH FREE STATE AND NORTHERN IRELAND (ULSTER)

But the constitution of 1922 did not prove satisfactory. During the ensuing ten years it was several times amended and when Eamon De Valera became head of the government after the general election of 1932 he proceeded to fulfill his pledge that he would make the Free State completely independent of Great Britain. A measure eliminating the requirement that members of the Irish parliament should take an oath of

THE ACCESSION OF DE VALERA (1932).

allegiance to the British king was soon passed. Likewise the new administration decided to withhold certain land annuities which were to be paid in accordance with the Anglo-Irish Treaty of 1921. This caused the British government to retaliate by imposing heavy duties on Irish goods coming into Great Britain, the proceeds being used as compensation for the defaulted annuities. To offset this the Irish authorities adopted the policy of paying bounties on exports. The war of trade and tariffs was waged with much bitterness for a time but eventually concessions were made on both sides, notably in 1935 when an agreement was effected under which British coal was allowed into Ireland on better terms in return for a relaxing of the handicaps placed on the export of Irish cattle to England. A further *rapprochement* was made in 1936 when an Anglo-Irish trade pact went into operation with advantage to both sides.

HIS BREACH WITH ENGLAND.

Early in 1933 the Irish Labor party, which had been supporting De Valera, deserted him on an important issue and this desertion forced a new election as a result of which the Republicans (or Fianna Fail party) were continued in power with a clear majority over all opposing groups. Strengthened by this new mandate De Valera proceeded to widen the breach with England. He exercised the right to dictate the choice of a governor-general for the Free State,—a right which the British government had conceded to all the dominions during the imperial conference of 1930. Then he obtained enactment by the Irish parliament of a bill which eliminated from the Free State Constitution the right of the governor-general to withhold the royal assent from Irish legislation. Another measure abolished the right of Irish citizens to carry appeals from the Free State supreme court to the privy council in London.

THE ELECTION OF 1933 AND ITS RESULTS.

The authority of the Irish parliament to do this, under autonomy granted to all the dominions by the Statute of Westminster was subsequently upheld by the judicial committee of the privy council in the case of Moore *v.* Attorney-General for the Irish Free State (June 6, 1935). This decision held that the Statute of Westminster (see pp. 382–383) superseded the British Act of 1922 approving the Irish constitution and hence that the latter could be varied at any time by a simple act of the Irish parliament. In other words the Statute of Westminster was held to have emancipated the Free State, along with the other British

AN IMPORTANT DECISION.

dominions, from all parliamentary restrictions upon constitutional change. Did it also operate to relieve Southern Ireland from obligations assumed in the Anglo-Irish treaty of 1921, for example, the obligation to permit Irish harbors to be used as naval bases by the British fleet? The text of the decision would certainly give that impression, but it has been criticized as "terminologically inaccurate" and the matter is still in controversy.[1]

THE NEW CONSTITUTION OF EIRE

Finally, in 1937, President De Valera presented to the Dail a wholly new constitution, which was accepted by that body. It then went before the voters at a general election and was ratified, but not by the overwhelming vote that had been expected.[2] While this constitution proclaims itself to be established for the whole of Ireland (Eire), it nevertheless declares that "pending the reintegration" of the whole island the laws enacted by the Irish parliament shall extend only to the territory of the Irish Free State.

THE NEW IRISH CONSTITUTION.

What is the status of Eire, or Southern Ireland, under the new constitution? Englishmen and Irishmen alike find that question a difficult one to answer.[3] In all respects except one the new constitution establishes an independent republic with untrammelled rights of sovereignty. This single limitation is related to the use of Irish harbors by the British navy in time of war or of strained relations with a foreign power. Great Britain has not yet surrendered this right, nor is it at all certain that she will ever do so. And so long as the right remains it is difficult to see how Ireland can be free to make any alliance, or any agreement to be recognized as a neutral by

ITS VIRTUALLY COMPLETE BREAK WITH GREAT BRITAIN.

[1] In rendering its decision the judicial committee of the privy council declared that "the Statute of Westminster gave to the Irish Free State a power under which they could abrogate the Treaty,"—a statement which would seem, on the face of it, to be clear enough as judicial decisions go But it has not been generally so regarded by English constitutional authorities. See, for example, A. Berriedale Keith, *The Governments of the British Empire* (New York, 1935), pp. vi–vii, and Henry Harrison, *Ireland and the British Empire* (London, 1937), p. 196

[2] The vote was 685,105 in favor, and 526,945 against. This was far from indicating that Southern Ireland is a unit on the question of complete separation from Great Britain.

[3] The latest and best discussion is in Henry Harrison, *Ireland and the British Empire* (London, 1937).

Britain's enemies in time of war. The new constitution (Article 29) provides, likewise, that

> For the purpose of the exercise of any executive function of Eire in, or in connection with its external relations the government may, to such extent and subject to such conditions, if any, as may be determined by law, avail or adopt any organ, instrument or method or procedure used or adopted for the like purpose by the members of any group or league of nations with which Eire is or becomes associated for the purpose of international coöperation in matters of common concern.

This opens the door for coöperation with the other members of the British commonwealth of nations, so far as the external relations of Eire are concerned, and the Irish parliament has passed an act providing that the king who is recognized by the British commonwealth of nations "as the symbol of their co-operation" is also authorized to act on behalf of the Irish government (when advised by the Irish authorities to do so) in such matters as the appointment of diplomatic representatives and the making of international agreements.

THE PRESIDENT AND THE PRIME MINISTER.

Provision is made in the new constitution for a President who is to be elected by direct vote of the people. He is to have a seven-year term and will be reëligible. The President serves as the chief executive, and on nomination of the Dail he appoints the prime minister. On the advice of the prime minister, and with the approval of the Dail, he likewise appoints the other members of the ministry. But the President must follow the advice of the ministry except in those matters where the constitution gives him absolute discretion, or where it provides for consultation with the council of state, or where it provides some other channel of procedure.[1]

[1] The powers of the President may be summarized in this way: I. *On nomination of the Dail* he appoints the prime minister. II. *On the advice of the prime minister* he (a) appoints other ministers after the Dail has given its approval, (b) may dismiss ministers, (c) summons and dissolves the Dail, (d) signs bills that have been passed or which are deemed to have been passed by both Houses, (e) exercises supreme command of the defense forces subject to regulation by law, (f) grants pardons, (g) performs all other functions which are bestowed on him by the constitution but are not otherwise limited. III. *After consultation with the council of state* he (a) may convene either or both Houses, or communicate with them, (b) may refer any bill, other than a money bill or a proposed constitutional amendment, to the supreme court for an advisory opinion, and if the court's opinion is adverse shall refuse to sign the bill, (c) may address a message to the nation, if the ministry also approves. IV. *On the request of a majority in the Senate or a vote of one-third in the Dail* he may decide that a bill passed without the

The national parliament of Ireland (Eire) consists of two chambers, namely, a House of Representatives (Dail Eireann) and a Senate (Seanad Eireann). The former is made up of members elected from constituencies having at least three members under a system of proportional representation "by means of the single transferable vote." Universal suffrage is provided. The maximum term of the Dail is seven years, but like the British House of Commons it may be dissolved at any time within that period. The power of dissolution rests with the President on the advice of the prime minister, but the President may refuse to dissolve the Dail on the advice of a premier who has "ceased to retain the support of a majority" in it.

THE IRISH PARLIAMENT: 1. THE DAIL.

By the new constitution the Dail is given the usual powers of a lower chamber, with the right of initiative in financial measures. Provision is made, as in the rules of the House of Commons, that no bill or resolution for the appropriation of money can be passed by the Dail unless the purpose of the appropriation shall have been recommended by a message bearing the prime minister's signature.

ITS POWERS

The Irish Senate has sixty members, of whom eleven are named by the prime minister and forty-nine elected. Six of these are chosen by the two Irish universities (National University and the University of Dublin). The remaining forty-three are selected from five panels containing names of persons who have been nominated to represent the chief national interests and activities (e.g., agriculture, industry, labor, etc.). The method of constituting the five panels is left to be determined by law, and the final selection of senators from the panels is made, under a system of proportional representation, by a small electorate consisting of every person who shall have been a candidate for the Dail at the last general election and who shall have received at that election at least five hundred first-preference votes. For these senatorial elections the whole country forms a single constituency. Senators hold office for the same term as members of the Dail and a general election for the Senate must take place within ninety days after the former is dissolved.

2. THE SENATE.

Senate's concurrence is of such national importance as to warrant its being submitted to a popular referendum or withheld until after a general election. V. *At his own absolute discretion* he may refuse to dissolve the Dail on the advice of a prime minister who no longer controls a majority in it.

The rule as to relations between the two chambers with respect to money bills is much the same as in the British House of Commons.

RELATIONS BETWEEN THE TWO CHAMBERS:

1. MONEY BILLS.

Such measures, when passed by the Dail, go to the Senate. Within twenty-one days a money bill must be returned to the Dail which may accept or reject the Senate's amendments. If the measure is not returned within the twenty-one days, or if the Dail rejects the amendments, the bill is deemed to have been passed by both chambers and becomes a law. Thus the Dail is given absolute supremacy as respects money bills. In case of disagreement as to whether a measure is or is not a money bill, the chairman of the Dail decides; but an appeal from his ruling may be taken to a committee on privileges appointed for the purpose. This committee, named by the chairman of the Dail after consultation with the council of state, is to be composed of an equal number of members from both chambers, with a judge of the supreme court as its chairman. The decision of the committee on privileges is final.

2. OTHER MEASURES

As respect all measures other than money bills the two chambers are given equal powers of initiative. And the assent of both chambers is necessary to the enactment of such measures. But if the Dail passes any bill or resolution, other than a money bill, and if such bill is rejected by the Senate, or left without action, or passed with amendments to which the Dail does not agree—how is such disagreement settled? The constitution provides that in such cases the Dail must wait for ninety days after the measure has been sent to the Senate. Then, within the next 181 days it may by its own action give the measure the force of law. If, however, the measure is one which is certified by the prime minister as an urgent or emergency measure, the Dail may shorten the ninety-day period if the President, after consultation with the council of state, concurs in such action. Thus it is that the Dail can enact any measure, without the Senate's concurrence, after a lapse of ninety days, and any emergency measure immediately.

ADVANCE RULINGS ON CONSTITUTIONALITY.

All bills are sent to the President for his signature and for promulgation by him. He has no power of veto but in the case of any measures, other than money bills and proposals to amend the constitution, the President may, after consultation with the council of state, submit such measure to the supreme court for a ruling on its consti-

tutionality. This ruling must be given within thirty days; meanwhile the President delays his signature and if the court decides adversely to the bill he withholds it altogether and the measure fails to go into force. This arrangement is designed to have the constitutionality of measures determined before they are put into effect.

A somewhat novel provision, moreover, enables measures to be withheld for a popular referendum. In the case of any measure (other than a proposal to amend the constitution) on which there has been disagreement between the two chambers but which has been passed under the rules relating to such disagreements, a petition can be presented requesting the President not to sign the measure. This petition must state that the measure "is of such national importance that the will of the people thereon ought to be ascertained." The petition must be signed by a majority of the members in the Senate, and by at least one third of the members in the Dail. On receipt of such a petition the President, after consultation with the council of state, may withhold his signature until the people at a referendum have approved the measure or until the Dail has once more approved it after a dissolution and new election.

PROVISIONS FOR A REFERENDUM.

The council of state, to which reference has been made in the preceding pages, is composed in part of ex officio members and in part of persons appointed by the President. The ex officio members include the prime minister, the deputy prime minister, the chief justice, the chairman of the Dail, the chairman of the Senate, and the attorney-general, together with such persons as have held certain of these offices in the past. The appointive members may not number more than seven. Under ordinary circumstances the President is to be governed by the advice of his ministry, who are in turn responsible to the Dail, but there are a number of occasions specified in the constitution in which he may not act until after consultation with the council of state.

THE COUNCIL OF STATE.

The Irish supreme court, established by the new constitution, is given both original and appellate jurisdiction. Its members are appointed by the President and the number of judges is regulated by law. Justices hold office for life and may not be removed except for stated misbehavior or incapacity, and then only on resolutions passed by both chambers.

IRISH SUPREME COURT.

AMENDING THE CONSTITUTION.

Amendments to the constitution are to be initiated in the Dail and after having been passed (or deemed to have been passed) by both chambers, must be submitted by referendum to the people.

THE BILL OF RIGHTS.

The constitution contains various articles relating to personal and property rights. These provisions, for example, forbid the granting of titles of nobility, the deprivation of personal liberty except in accordance with law, the inviolability of homes, the right of citizens freely to express their opinions, the right of peaceable assembly, the integrity of the family, the provision of free primary education, the guarantee of private property, freedom of religious belief, and many other fundamental rights.

IRISH LOCAL GOVERNMENT.

Local government in Ireland continues for the most part as it was before 1922 There are twenty-seven administrative counties, each with its own elective county council, chosen under a system of proportional representation. The cities (or boroughs) have much the same organization as in England (except that the aldermen are directly elected) but the minister of local government has been given power to dismiss county or city councils from office and replace them by appointive commissioners. The most interesting (and significant) feature of the local administrative system is the power of the central government to select all the paid officials who are employed by the counties and cities. This is done through a local appointments commission which sits in Dublin.[1] This commission prescribes the qualifications and holds the competitive examinations. The final selections are made by it, without giving the local governments any share in the matter. And after an appointment is made the local authorities cannot dismiss an official although he is paid out of the local treasury. He can only be dismissed with the consent of the ministry. This represents an extraordinary centralization of the appointing and removing power. It is the absolute negation of municipal home rule—and in Ireland, of all places. Whether such a system can long be maintained is questionable. Whether it will conduce to the development of a true sense of civic responsibility in local government is even more questionable.

[1] It has three members, viz., the secretaries of the finance, education, and local government departments.

NORTHERN IRELAND

By the Treaty of 1921 the six northern counties of Ireland were given the option of joining the Free State or of continuing their separate government under the Act of 1920. They chose the latter alternative. Northern Ireland has her own parliament, with a Senate and a House of Commons, a cabinet and a governor. Members of the House are elected by the people from single-member districts. The senators are chosen by the House for eight-year terms When disagreement arises between the two chambers over a non-financial bill, the measure goes over until the next session. Then, if the disagreement persists, a joint sitting is held and the matter voted upon. In the case of money bills the Senate can reject but is not permitted to amend. If it rejects a money bill, however, a joint sitting can be required at once, without waiting till the next session. The governor of Northern Ireland is appointed by the crown but is bound by the advice of his ministers, as in the other dominions. The ministers, in turn, are responsible to the House. Northern Ireland continues to be represented in the British House of Commons as before the treaty.

THE GOVERNMENT OF NORTHERN IRELAND (ULSTER).

The six northern counties constitute nearly the whole of the province of Ulster and have formed the most prosperous portion of Ireland. They occupy an area less than half the size of Maryland, with a population of about a million and a quarter. Belfast is the capital. Northern Ireland differs in religious affiliation from the rest of Ireland, and that is the chief reason why one small island seems to require two separate governments.

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IRELAND. HISTORY. There are many political histories of Ireland. The most useful for the general student are P. W. Joyce, *Concise History of Ireland* (London, 1914), W. O'C. Morris, *Ireland 1494–1905* (Cambridge, England, 1909), and S. Gwynn, *The History of Ireland* (London, 1922). Attention should also be called to E. R. Turner's *Ireland and England* (New York, 1919) which contains a very good bibliography.

HOME RULE. On the home rule movement there is P. G. Cambray, *Irish Affairs and the Home Rule Question* (London, 1911), written from the

Unionist point of view, and S. G Hobson, *Irish Home Rule* (London, 1912), which is strongly Nationalist in tone F. H., O'Donnell, *History of the Irish Parliamentary Party* (2 vols., London, 1910) is a full and trustworthy recital.

THE EASTER REBELLION AND THE TREATY. The Sinn Fein movement is described in R. M. Henry, *The Evolution of Sinn Fein* (London, 1920), and the Easter insurrection in John F. Boyle, *The Irish Rebellion of 1916* (London, 1916). A much more impersonal volume is *The Revolution in Ireland, 1906–1923* by Professor W. Alison Phillips (2nd edition, London, 1926).

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The latest and best book on the relations between Ireland and the British commonwealth of nations is Henry Harrison, *Ireland and the British Empire* (London, 1937).

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CHAPTER XX

THE GOVERNMENT OF INDIA

The successful administration of the Indian Empire by the English has been one of the most notable and admirable achievements of the white race during the last two centuries.—*Theodore Roosevelt.*

India is the vast and varied Italy of the Asiatic continent, a great peninsula fenced on the north by towering mountains, but protruding far southward into the tropical seas. To Europeans of the middle ages it was dimly known as a far-away land, renowned for the spices and other costly commodities which it supplied. When Englishmen, during the sixteenth century, began to take an interest in India, the peninsula was a hopeless jumble of diverse native governments, races, religions, and languages. The Great Mogul, at Delhi, was nominally overlord of them all; but his authority did not count for much outside a relatively small area. His extensive Mogul empire had become disintegrated into a host of kingdoms, principalities, states, and territories. India, in 1600, was like Continental Europe at the same epoch, a chaos of political rivalries, big and little, with endless quarrels going on and no outstanding rulership. This must be kept in mind if one is to understand the ease with which the English brought the country under their sway.

INDIA IN THE SEVENTEENTH CENTURY.

England's interest in India dates from the chartering of the East India Company, a body of commercial adventurers desiring to trade with the Orient. This company, in 1600, was given wide powers, including the right to acquire territory and to make regulations for the government of such acquisitions Although its chief activities were commercial, the East India Company soon found it desirable to secure, by purchase from the native potentates, various tracts of land immediately surrounding its trading posts or "factories." These land holdings were gradually extended by further treaties and purchases until the company became the owner of large territories in which it set up its own civil government. The

HOW ENGLAND OBTAINED HER FIRST FOOTHOLD IN INDIA.

East Indian trade turned out to be very profitable and in some years yielded dividends of one hundred per cent, hence the company's operations were rapidly extended to many parts of the peninsula. Large stores of valuable merchandise were concentrated at various points and had to be protected. The native chiefs could not guarantee this protection, so the company inaugurated the policy of maintaining, at each of its posts, a small garrison of Englishmen, drilled and officered in military fashion. And with the rapid increase in the number of trading posts these garrisons eventually gave the company control of a sizable army.

THE STRUGGLE WITH FRANCE

In due course, however, rival exploiters of the trade came into the field, more particularly the French East India Company which was organized in 1664. This company also established trading posts and warehouses in India, sometimes not far from the English settlements. Similarly the French entered into negotiations with the native rulers and secured control over various tracts of territory. Like the English, moreover, they stationed garrisons to protect their trading operations. But this policy of keeping constabularies in India proved rather expensive and after a while both companies found it cheaper to hire and train native troops. They found that these natives made good soldiers when drilled and commanded by European officers.

THE CONFLICT WITH THE FRENCH.

In this respect the native races in India differed from those of North America. The brown man was amenable to military discipline, the red man was not. Although both the French and the English tried to drill their respective allies in the American colonial wars, they never met with any success The North American Indian could never be persuaded to fight in European formation. Given a musket, he fought as with bow and arrow, skulking behind trees and jumping around from one ambush to another. He would not march in column of squads or deploy into line when the enemy appeared. But the natives of India were ready to do it. What is more, they were willing to do it for half the pay that Europeans demanded.

INDIANS, EAST AND WEST.

So both the English and French East India companies soon had large native armies on their hands. And of course these armies had to have something to do. Mercenaries are unprofitable unless they

INDIA

British Provinces
Native States (including those in British Provinces)
Independent States

PERSIA
AFGHANISTAN
OMAN
TIBET
CHINA
Mekong
FRENCH INDO-CHINA
SIAM
ARABIAN SEA
BAY OF BENGAL
CEYLON
Kandy
Colombo
Maldive Is
Islands
Penang
The Dindings
Sumatra
FEDERATED MALAY STATES

Emery Walker Ltd.

can be kept employed. Opportunities for trouble, moreover, were easy to find, for the native rajahs were constantly at war with one another, and they naturally tried to secure the commercial companies as allies. So whenever two rajahs came to blows, they would make overtures to the English and French companies for help, offering grants of land, privileges, and various trade concessions in return.

HOW THE ANGLO-FRENCH CONFLICT DEVELOPED.

In this way the two companies were led into intrigues, secret treaties, alliances, and finally into open warfare. When the English supported one claimant to a native throne, the French, by sheer force of self-interest, felt obliged to support his rival. Thus it came to pass that English and French officers were leading company troops against each other under the flags of their respective countries, although England and France were supposedly at peace. Had India been a nation, a united country, with a strong central government, this condition of affairs would never have been tolerated; but there was neither unity nor consciousness of nationalism. So the whole peninsula became a cockpit in which the two European commercial companies fought their duel for supremacy. When the combat thickened these companies drew their respective governments in, and the Anglo-French conflict of 1753–1761 became a war of almost world-wide dimensions. French and British armies battled in India, in Europe, and in America as well.

INTRIGUES WITH NATIVE POTENTATES.

The issue as concerned India was decisively settled by the outcome of this war. England, holding control of the seas, was able to support and reinforce her troops, while the French were not. As a consequence the English won a series of victories and by the Treaty of Paris (1763) France agreed to withdraw from India, reserving only a small tract of land at Pondichery. The British East India Company, meanwhile, clinched its hold upon the country by reducing the more powerful native rulers to subjection. The Great Mogul at Delhi became its vassal. It deposed other native potentates and installed rulers of its own choice. Before long it acquired the right to collect the taxes and to administer justice throughout the whole area of Bengal. Thus the Great Company expanded its activities from commerce to government. From a trader in spices and dyes, it became a ruler of territories, thrones, and destinies.

THE OUTCOME IN 1763.

INDIA AND THE GREAT COMPANY

Up to this point the British government had assumed no direct share in the administration of India. It had merely given military aid to the British East India Company as part of its own war against France. But the powers and jurisdiction of the company had now become so extensive that some supervision by parliament seemed to be necessary. It is always unwise to leave the functions of trader and ruler unreservedly in the same hands. For when that is done there is likely to be more zest for profits than for good government. At any rate the operations of the British in India, during the years immediately following the expulsion of the French, showed how sinister an alliance between commerce and government can be, for the East India Company overworked itself to turn the civil administration into an agency for enriching everybody except the people. Its officials levied indemnities and fines at discretion, piled up wealth for themselves, and then came back to England where they bought seats in the House of Commons from the owners of pocket boroughs.[1]

INDIAN ADMINISTRATION AFTER 1763.

There, in the heat of partisan zeal, they often shocked the conscience of the country by showering accusations of extortion and brutality upon one another. By these and other tales of corruption the public conscience in England was aroused and in 1776 parliament passed a general statute known as the Regulating Act which provided that a governor-general, appointed by the crown, should be stationed at Calcutta with an appointive council to assist him. The governor and his councillors were to supervise the political administration of the territories within the company's jurisdiction, while the company's own board of directors was left in charge of commercial and financial matters Warren Hastings became the first governor-general under the provisions of this Act.

THE REGULATING ACT (1776).

But the provisions of the Regulating Act were found to be unsatisfactory, for the respective powers of the two authorities were not clearly defined, and much friction between the company and the

[1] See *above*, pp. 160–161. Readers of Thackeray will recall his somewhat exaggerated description of the typical homecomer from India who purchased the estates of broken-down English gentlemen with rupees tortured out of bleeding rajahs, who smoked a hookah in public, and in private carried about a guilty conscience, with diamonds of untold value, and a diseased liver, who had a vulgar wife and a retinue of black servants whom she maltreated, etc.

governor-general resulted. Eventually Hastings was recalled and impeached before the House of Lords; but he was not convicted. The historian Macaulay, in what is perhaps the finest essay ever written by an Englishman, has vividly described the proceedings. The root of the trouble lay in an unworkable statute. The dual plan of royal and company government would not function. There was nothing to do but abandon it, which parliament did by the passage of Pitt's India Act in 1784. This statute established in London a board of control consisting of several privy councillors with a president who eventually became secretary of state for India. It provided that all operations of the East India Company should be under the supervision of this board. Thus it established the complete supremacy of the crown in India. The office of governor-general was retained, but in order to avoid friction the appointment was now vested in the hands of the company. The company, in other words, was to govern India under the scrutiny of a board the members of which were appointed by the crown and responsible to parliament.

PITT'S INDIA ACT (1784).

This system of administration turned out to be an improvement. It stood the strain of the Napoleonic wars during which the French attempted to regain a footing in India, and with some changes it was continued down to the middle of the nineteenth century, during which time large additions to the British territories in India were made. The authority of the native rulers was gradually reduced, or even extinguished, in favor of British jurisdiction. India seemed to be prospering under the rule of "John Company." But in the teeming lands of the Orient the superficial appearances are often deceptive, and there was more resentment brewing in India than the English officials realized.

HOW IT FUNCTIONED

In 1857 a widespread mutiny of native troops broke out suddenly and caught the company unawares. The English in India had built up a formidable engine of revolt through their policy of maintaining large bodies of Sepoy troops, armed and drilled in European fashion. They had disregarded the axiom of statesmanship that it is never safe to arm a people whom you desire to hold in subjection. The situation in India, prior to 1857, was placid on the surface but the British officials had no suspicion of what was going on underneath. The native troops were merely awaiting their opportunity to wipe the "sahibs" off the map.

THE SEPOY MUTINY (1857).

THE SEPOY MUTINY AND ITS AFTERMATH

WHAT CAUSED IT.

A small spark will touch off an explosion when enough combustible vapor is at hand. The Indian mutiny was started by an incident of almost ridiculous inconsequence. This is the story in brief: The Enfield cartridges used by the Sepoy troops in their target practice were supplied from England. To protect them from dampness on the voyage they were enclosed in paper greased with animal fat. Before putting the cartridge in his rifle at target practice the native soldier was supposed to bite off this cover. Now it happens that to the Hindu the cow is a sacred animal, and to the Mohammedan the pig is unclean. So, no matter what the soldier's religion, it was not difficult to convince him that by using greased cartridges he was committing a sacrilege. Agitators convinced the troops that the destruction of their ancient faith was the chief design of the whole procedure. On a given signal whole regiments mutinied, shot their officers, and ran amuck. The restoration of the Mogul empire was proclaimed. The rising spread quickly from garrison to garrison, and many British civilians as well as officers were shot down.

ITS SUPPRESSION.

For a time it looked as though the day of European rule in India had come to an end. Fortunately for the English, however, the mutiny did not spread throughout the whole peninsula. India is too vast and too diversified an area to unite in a common cause and the mutiny was for the most part localized in the northwest provinces. Fortunately, also, an English military expedition was on its way to engage in a war with China. The British government promptly called off the Chinese war, sent a fast vessel to intercept the transports, and diverted them to India. After some anxious months, and with much hard fighting, the mutiny was suppressed.

FINDING A SCAPEGOAT.

When the trouble was over, public opinion in England insisted on finding a scapegoat, as it does after all such mishaps. Everybody hastened to put the blame on the company. The existing scheme of government in India was assailed by all parties because it involved a delegation of political authority to a profit-making corporation. People forgot, for the moment, that the company had built up a great empire from the nucleus of a few trading posts, that it had been governing this territory for seventy years under royal supervision, and that there was a credit

as well as a debit side to its ledger. But the people of England were in no mood to accept alibis or explanations. They demanded that the whole system of British control over India be reconstructed. Parliament bowed to the clamor by decreeing that the East India Company should surrender its political powers and go out of existence.

THE ACT OF 1858.

In 1858, therefore, the whole territory passed under the direct control of the crown.[1] India was henceforth to be governed by a viceroy appointed on the advice of the English cabinet. Provision was also made for continuing the secretary of state for India, with rank as a member of the ministry. The secretary of state was to be assisted by a council of fifteen members, of whom the majority were to be persons who had lived in India. This Council for India was to hold its sessions in London. The Indian budget was to be voted by parliament. As for the East India Company, it was given a term of years in which to fit its commercial operations into the new political set-up. As a promoter of commerce it had been a huge success in its day, but its governmental responsibilities had become too big for any company to carry.

INDIA UNDER THE CROWN.

India was governed under the Act of 1858 for a little over fifty years. The secretary for India served as a link between the crown and parliament on the one hand, between England and India on the other. His powers were limited, to some extent, by the necessity of acting in accord with the Council for India, of which he was the presiding officer. In India a viceroy, appointed for a five-year term by the crown on the advice of the prime minister, was the head of the administration. He represented the Emperor of India, that is, the British monarch as emperor. He was assisted by two councils, one executive and the other legislative. All the members of the executive council were Englishmen, but the legislative council contained some natives. The legislative council had authority to make laws for India, but all its actions were subject to the ultimate legislative power of the British government.

RISE OF A DEMAND FOR SELF-GOVERNMENT.

Under this scheme of government India came down into the twentieth century. A native population of nearly three hundred millions allowed itself to be ruled by a few thousand Englishmen. The rest of the world wondered why. There were two reasons—the lack of unity among the people of India and the adroitness of the British

[1] It was not until 1877, however, that Queen Victoria was proclaimed Empress of India.

rulers. These rulers were wise enough to refrain from interfering with the social and religious customs of the people. The country, during these fifty years, gave the English no serious trouble. Nevertheless there gradually developed, especially among the educated natives, a strong feeling that India ought to have a larger measure of self-government.

The reasons for this feeling are self-evident to any American reader, or ought to be. They are essential elements of an old drama that has been played on the frontiers of civilization many a time. No scheme of government, however enlightened, altruistic, or benevolent, has any chance of proving satisfactory unless it is founded upon the consent of the governed. White men, at various stages in history, have undertaken to govern "backward" races of black, brown, and yellow men for their own good; but if they have ever received one iota of gratitude for it the chronicles of history do not record the fact. Government by the best people is not necessarily the best government. As between misgovernment by themselves, and good government by outsiders, it is one of the perversities of human nature that people always choose the former.

THE REASONS FOR IT.

TOWARDS SELF-GOVERNMENT

At any rate the desire for self-government in India became more articulate during the closing years of the nineteenth century. It found expression through the Indian National Congress, an unofficial body of delegates collected from all parts of the country. India, like Ireland, was fostering a home rule movement. But it made little real progress until after the World War. India might have given England a lot of trouble during this conflict, but the country remained loyal in spite of German predictions that it would flame into revolt. Not only that—India actually contributed an expeditionary force to aid the Allied cause. This voluntary display of imperial patriotism made a favorable impression in England and gave rise to a feeling that India ought to be rewarded by the placing of greater confidence in her people.

INDIA DURING THE WORLD WAR

Accordingly the British parliament enacted a new constitution for India in 1919, with provision for an Indian parliament, but with a stipulation that in case of disagreement between this body and the viceroy the will of the latter should prevail. A considerable

measure of local self-government was also given to the various provinces of India, but not enough to satisfy the leaders of the movement for home rule.[1] Even in England the Act of 1919 was not regarded as a permanent solution of the problem but it served a useful purpose in carrying things along until a more comprehensive and better scheme could be devised.

THE GOVERNMENT OF INDIA ACT (1919).

The Act of 1919 provided that at the expiration of ten years a commission should be appointed to inquire into the workings of the new government and to recommend any desirable changes. In 1927, two years before the designated time, such a commission was appointed under the chairmanship of Sir John Simon. It visited India, made exhaustive studies, and presented a report to the British parliament in 1930. Among other far-reaching changes the Simon commission recommended that the government of India should be reorganized on a federal basis. Out of this report, after prolonged discussions at round table conferences and by a parliamentary committee, the Government of India Act of 1935 was framed and enacted.

The new constitution does not alter the channels of connection between India and the United Kingdom. The British king remains Emperor of India; the secretary of state for India continues to be a member of the British ministry and serves as the connecting link between the two governments. He is assisted by a small advisory council. The British crown is represented in India by a viceroy or governor-general who usually holds office for five years. The selection of this high official is made by the British cabinet. The capital of India was moved from Calcutta to Delhi in 1912 and the latter city will be the seat of the federal government under the new constitution.

BRITISH CONNECTIONS RETAINED.

THE NEW CONSTITUTION

The provisions of this "federal constitution for India" are quite elaborate (the Act has 478 sections); hence only a very general outline of its most important features can be given here.[2] Certain of these provisions become operative only when a designated number of the native states have declared their adhesion to the new plan. But

ADHESION OF THE NATIVE STATES.

[1] For a summary of these provisions the reader may be referred to E. A. Horne, *The Political System of British India* (London, 1922)

[2] It is printed in full, with commentary, in J P. Eddy and F. H. Lawton, *India's New Constitution* (London, 1935).

they may give a qualified adhesion, provided their reservations are acceptable to the British government. The Act further provided that until a sufficient number of formal adhesions were received from the native states the old legislative chambers should continue in existence but with a new array of powers.

A FEDERAL SYSTEM.

Geographically India is a unit; politically it has been divided into provinces and native states. The new constitution is intended to establish a federal government for the whole peninsula.[1] Provinces and native states will be members of it; any native state which does not join the federation at the outset will be allowed to come in later. The viceroy or governor-general is appointed by the crown as heretofore, but in exercising most of his functions he will act on the advice of a council of ministers who will be appointed by him as is done in the various British dominions. These ministers must be members of the legislature and presumably will be responsible to the house of assembly.

THE GOVERNOR-GENERAL'S POWERS.

But in matters relating to defense, external relations, and a few other fields of jurisdiction the viceroy or governor-general is to follow his own judgment, aided by instructions from London and by the advice of counsellors whom he may choose without reference to the wishes of the legislature. Subject to approval by the secretary of state for India he is likewise authorized to follow his own discretion, irrespective of the advice of his ministers, in order to secure the preservation of order, the safeguarding of the federal government's credit, the protection of the rights of minorities, the prevention of tariff discrimination against British imports, and in a few other contingencies.

THE LEGISLATURE:

1. UPPER HOUSE, OR COUNCIL OF STATE.

The federal legislature of India, under the new arrangement, is to consist (as now) of two chambers, a council of state and a house of assembly. The council of state will have 156 representatives from the provinces, all elected with the exception of six appointed by the governor-general. Of the 150 elective seats one half are unrestricted; the other half are allocated to special classes of voters (e g., 49 to Mohammedans, 7 to Europeans, 6 to women, 4 to Sikhs, etc.). All elective members are chosen on a restricted suffrage. In addition the council of state is

[1] The province of Burma, with a predominantly non-Indian population, is not included in the federation but has been given a government of its own.

to have members representing the native states but no state may be given more than five councillors. The total from these native states will be 104 if all the states come into the federation, thus giving the council a maximum membership of 260. In each native state the method of selecting its quota of councillors is determined by itself. All members of the council of state are given nine-year terms, but one third of them retire triennially.

The lower chamber or house of assembly is allotted 250 members from the provinces and a maximum of 125 members from the native states. In each province there are general constituencies and (where their numbers warrant it) certain seats are reserved for Mohammedans, Christians, Europeans, landowners, workers, women, and other special classes. As respects the native states the representation in the assembly is roughly proportioned to population, but the representatives are to be selected as each state determines. The term of assemblymen is five years but the chamber may be dissolved by the governor-general at any time.

2. THE LOWER HOUSE.

Both chambers will meet every year. The assent of both is normally required for the enactment of laws, but if they disagree the governor-general, after a stipulated period of delay and notice, may convene them in joint session where a majority vote decides the issue. If the disagreement is upon a financial measure he may convene the joint session at once, and he may also convene joint sessions forthwith in the case of a legislative deadlock on certain other matters. And when a bill has passed both houses the governor-general may withhold his assent or may reserve the measure for consideration by the London authorities.

PROVISIONS IN CASE OF A FAILURE TO AGREE.

An interesting feature of the Act of 1935 is the provision that the governor-general may make rules of procedure for the legislature covering various matters, e.g., to secure the prompt consideration of financial measures, to prevent the discussion of issues which are outside the legislature's jurisdiction, and to shut off debates on questions which are wholly within the discretion of the chief executive. In an emergency, moreover, when the legislature is not in session, the governor-general may also issue ordinances, but these must be laid before the legislative chambers when they reconvene and if not ratified within six weeks the ordinances become

EXECUTIVE DETERMINATION OF LEGISLATIVE PROCEDURE.

void. As respects matters which fall within his own discretion (such as national defense or external relations) he may issue ordinances at any time and they remain valid for six months in any case, or for a further six months if laid before the British parliament. Provision is also made that in case the machinery of the federal government breaks down at any point the governor-general may take over any power except that of the federal court, but such action must be ratified by the British parliament within six months or it becomes invalid.

POWERS OF THE FEDERAL LEGISLATURE.

What are the powers of the federal legislature? (As heretofore noted the Act of 1935 went into operation immediately as respects these powers, but could not become effective as regards the reorganization of the legislative chambers until a sufficient number of native states had given adhesion.) There is a detailed enumeration of (1) powers granted to the federal authorities, (2) powers reserved to the provinces, and (3) concurrent powers.[1] More than forty federal powers are listed, namely,

> armed forces; naval, military and air force works; external affairs, including the implementing of treaties and extradition; ecclesiastical affairs; currency, coinage, and legal tender; public debt; posts and telegraphs; public services; pensions; federal property; certain museums and research institutions and surveys; the census; admission to and movements in India; quarantine; imports and exports; railways; control of vessels; maritime shipping and navigation, admiralty jurisdiction; major ports; fishing and fisheries beyond territorial waters; aircraft and air navigation; lighthouses; carriage of passengers and goods by sea or by air; copyrights, inventions, designs, merchandise marks and trademarks; checks, bills of exchange; promissory notes; arms, firearms, ammunition; explosives; opium; petroleum; trading corporations; development of industry when declared federal by act; insurance; banking; elections; statistics; offences against laws under powers given in the list; duties of customs, including export duties; excise duties except on alcohol, narcotic and non-narcotic drugs, and preparations containing these substances; corporation tax; and control of the salt trade.

It is understood that any native state adhering to the federation must agree to surrender the foregoing powers into the hands of the

[1] For a good discussion of these powers see A. Berriedale Keith's recent volume on *The Governments of the British Empire* (New York, 1935), pp. 566–572; also J. P. Eddy and F. H. Lawton, *India's New Constitution* (London, 1935).

federal authorities. In addition there are certain fields of jurisdiction which the native states may concede to the federal government or may retain for themselves as they see fit. These include such matters as lotteries, naturalization, weights and measures, stamp taxes, and income taxes other than taxes on the income from agricultural land.

PROVINCIAL POWERS. To the provinces are reserved power over

> public order and justice; the jurisdiction and powers of courts; prisons; reformatories; provincial public debts and services, public works; libraries; elections; local government, public health and sanitation; pilgrimages within India; burials; education; communications subject to the federal powers; water and water rights; agriculture; land; forests; mines; fisheries; protection of wild birds and animals; gas and gasworks; trade and commerce within the province, including money-lending; inns and innkeepers; production, supply, and distribution of commodities, and development of industries; adulteration of foodstuffs; intoxicating liquors; unemployment and poor relief; incorporation of companies not under federal power; theatres; betting and gambling; charities and charitable institutions; offences against laws dealing with any of these matters, and statistics in relation thereto. They deal also with land revenue; excise duties excluded from the federal list; taxes on income from agricultural land, on lands and buildings, hearths and windows; duties in respect of succession to agricultural land; taxes on mineral rights; capitation taxes, taxes on professions, trades, callings; on animals and boats; on the sale of commodities; on turnover, and on advertisements; cesses on the entry of goods into a local area; taxes on luxuries, including entertainments, betting, and gambling; and stamp duties outside the federal sphere.

CONCURRENT POWERS. Then there is a list of concurrent powers which includes

> criminal law and procedure; civil procedure; evidence and oaths; marriage and divorce; infants and minors, adoption; wills, intestacy, and succession, save as regards agricultural land, transfer of property other than such land; registration of deeds; trusts; contracts, arbitration; bankruptcy, actionable wrongs; professions, newspapers and printing; lunacy and mental deficiency, poisons and dangerous drugs; mechanically propelled vehicles and boilers, prevention of cruelty to animals; European vagrancy and criminal tribes; and jurisdiction of courts in respect of matters in the list. A further group of subjects includes· factories; welfare of labor; health insurance, invalidity, and old age pensions; trade unions;

industrial and labor disputes; prevention of the extension into units of infectious or contagious diseases of men, plants, or animals; electricity; the sanctioning of exhibition of motion picture films, etc.

Each government (federal, provincial, and native state) must keep within its own sphere, but in case of emergency the federal legislature, with the assent of the governor-general, may step in and legislate on any provincial matter. Such action, however, must be duly laid before the British parliament and there confirmed or it becomes void. Nevertheless this power of federal intervention means that British control has been strengthened at the center. If occasion arises it can effectively limit the extensive grants of power which have been made to the provinces. Rules are also laid down to prevent conflicts as respects the concurrent powers of the federal and provincial authorities. And certain matters are declared to be outside the jurisdiction of all Indian governments, whether federal or provincial, e.g., the supremacy of the crown, the laws relating to British nationality, and the rights of Britishers entering India or residing there. More particularly the Indian legislatures are forbidden to penalize British subjects residing in India, or doing business there, by subjecting them to any discrimination under the laws.

CONFLICTS OF POWER.

The Act of 1935 also recast the government of the provinces and this part of the statute went into force on April 1, 1937. The dyarchy established by the Act of 1919 has been abolished and a large measure of responsible government is given to the provinces, subject to the limitation mentioned in the preceding paragraph.[1] Each province has an appointive governor who acts on the advice of his ministers. These ministers must have (or obtain) seats in the provincial legislature. But as in the federal system the provincial governor may in certain designated cases act on his own judgment, subject to control by the governor-general. Some of the provinces have a legislature of two chambers while others have only one. Members of the legislature are elected on a suffrage which represents a great widening as compared with the rules laid down by the Act of 1919. Qualified voters in the pro-

PROVINCIAL GOVERNMENT.

[1] Dyarchy was the term applied to an arrangement under which some of the provincial governor's advisers were responsible to the provincial legislature and some were not.

vincial elections number about fifteen per cent of the population.

Save for the powers which they surrender to the federal government upon joining the federation, the native states remain as before.

THE NATIVE STATES.

Each retains whatever form of government its ruler and his legislative body (where there is one) may prefer. There are over 500 of these states, big and little, with a total population of less than 80,000,000. The provinces, on the other hand, contain a total population more than three times as large. Occasionally the British authorities have intervened to dethrone unworthy rulers in native states, but in general they have kept their hands off. Whether a majority of the states will come into the federation, as contemplated by the Act of 1935, is as yet uncertain, although it is probable that they will do so.

INDIAN POLITICS.

The new constitution goes a good deal farther than the old, yet like the latter it is a compromise. It does not go far enough to satisfy the Nationalist party in India and the leaders of this party have urged their followers to boycott the new provincial legislature. They argue that the Nationalist Congress, their own All-India convention of party delegates, is the only true representative body. They believe that the powers which are reserved to the crown, the viceroy and the provincial governors, although designed mainly for use in emergencies, are broad enough to make Indian self-government a sham if the British authorities use them freely. But there is no likelihood that they will be arbitrarily used so long as things go along with reasonable smoothness. That, at any rate, is the tradition of British rule in other parts of the world. The Nationalists, however, are inclined to see John Bull in a Machiavellian rôle.

GENERAL SCOPE OF THE NEW CONSTITUTION.

It is quite true that the Act of 1935 does not provide dominion status for India. It does not grant self-government, or responsible government, except to the provinces, and even there the right of federal intervention exists if the need should arise. Through the overrepresentation of minorities, and the large discretionary powers of the governor-general, the supremacy of British influence in the federal government of India is thought to be assured. The native states are governed by autocratic, hereditary rulers. Doubtless they will infuse a strongly conservative, and therefore a pro-British, element into both chambers of the legislature. All in all, the Act of 1935 represents a continuance of the traditional British policy,

which is to let her dependencies win self-government step by step, meanwhile watching the process with vigilance and care.

History. For historical details the reader may be referred to A. B. Keith, *Constitutional History of India, 1600–1935* (London, 1936), Sir Valentine Chirol, *India, Old and New* (New York, 1921), and to Sir Verney Lovett, *India* (London, 1923) which contains a good bibliography. C. M. P. Cross, *The Development of Self-Government in India, 1858–1914* (Chicago, 1923) is an informing book on the period, and also contains a bibliography. Two volumes in the Cambridge History of India deal exhaustively with *British India, 1497–1858*, and *The Indian Empire, 1858–1918*. Both have elaborate bibliographies Likewise there is the *Cambridge Shorter History of India* (London, 1934). Mention should also be made of W. J. A. Archbold, *Outlines of Indian Constitutional History* (London, 1926), and of B. K Thakore, *Indian Administration to the Dawn of Responsible Government* (Bombay, 1926).

The Act of 1919 and After. On the political system established by the Act of 1919 there are several useful volumes, notably Sir Courtenay Ilbert and Lord Meston, *The New Constitution of India* (London, 1923), B. G. Sapre, *The Growth of the Indian Constitution and Administration* (Sangli, India, 1924), E. A. Horne, *The Political System of British India* (London, 1922), D. N. Banerjee, *The Indian Constitution and Its Actual Working* (London, 1926), and Sir T. B. Sapru, *The Indian Constitution* (Madras, 1926). J. Ramsay MacDonald's book on *The Government of India* (London, 1919) deals largely with conditions prior to the establishment of the new political system, but contains excellent chapters on such topics as the protected states, the Indian civil service, the administration of justice, and the rise of nationalism.

The Act of 1935. The best general summary is the one given in A. B. Keith, *Governments of the British Empire* (New York, 1935), pp. 544–601. A more extensive analysis is printed in J. P. Eddy and F. H Lawton, *India's New Constitution* (London, 1935). K. V. Punniah, *India as a Federation* (Madras, 1936), G. N. Joshi, *The New Constitution of India* (London, 1937), and N. Gangulee, *The Making of Federal India, 1911–1935* (London, 1936) also deserve mention.

Problems and Politics. On present-day politics and problems mention may be made of Lord Curzon, *British Government in India* (London, 1925), Sir Verney Lovett, *A History of the Indian Nationalist Movement* (London, 1920), E. Beran, *Thoughts on Indian Discontents* (London, 1929), M. K. Gandhi, *Young India* (London, 1927), C. F. Andrews, *Mahatma Gandhi's Ideas* (London, 1929), P. P. Pillai, *Economic Conditions in India* (London, 1925), John Beauchamp, *British Imperialism in India* (London, 1934), F. M. De Mello, *The Indian National Congress* (Oxford, 1934), D. G. Pole, *India in Transition* (London, 1932), and P. Staal, *A Foreigner Looks at India* (London, 1934).

CHAPTER XXI

BRITISH DOMINIONS AND COLONIES

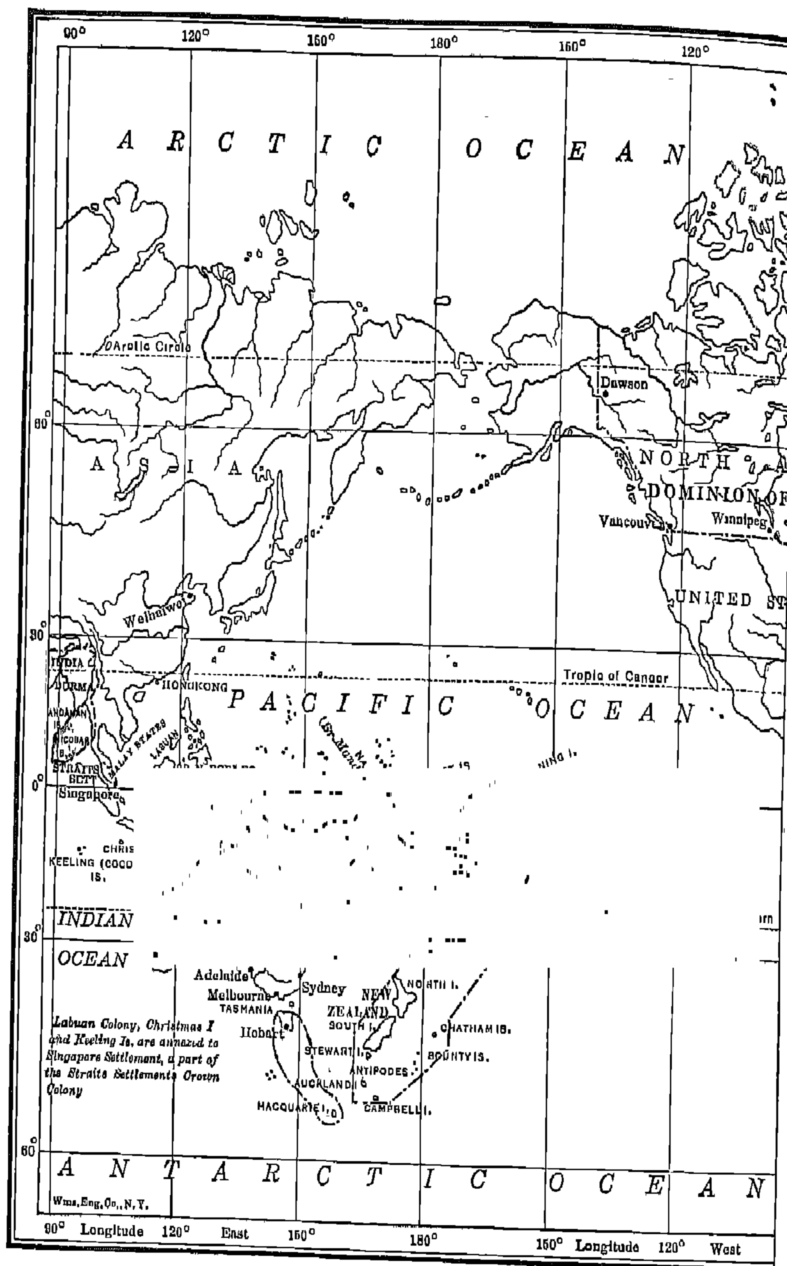
It would be performing more than can reasonably be expected from human sagacity if any man, or set of men, should always decide in an unexceptionable manner on subjects that have their origin thousands of miles away from the seat of the imperial government.—*Lord Durham.*

A UNIQUE PHENOMENON.

The British empire, or British commonwealth of nations as it is now called, comprises more than one quarter of the habitable surface of the globe. Its total population is nearly half a billion, of which India contributes about two thirds. Now the entire population of the world is estimated to be less that two billions, hence one person out of every four on the earth's surface is a British subject. The world has never before seen such a far-reaching and heterogeneous political aggregation. Writers have compared it with the empire of ancient Rome, but the two have no significant features in common. The British imperial commonwealth of today bears no resemblance to anything that has ever existed or ever been tried. In its extent, its diversity, and its loose political organization it is a unique phenomenon.

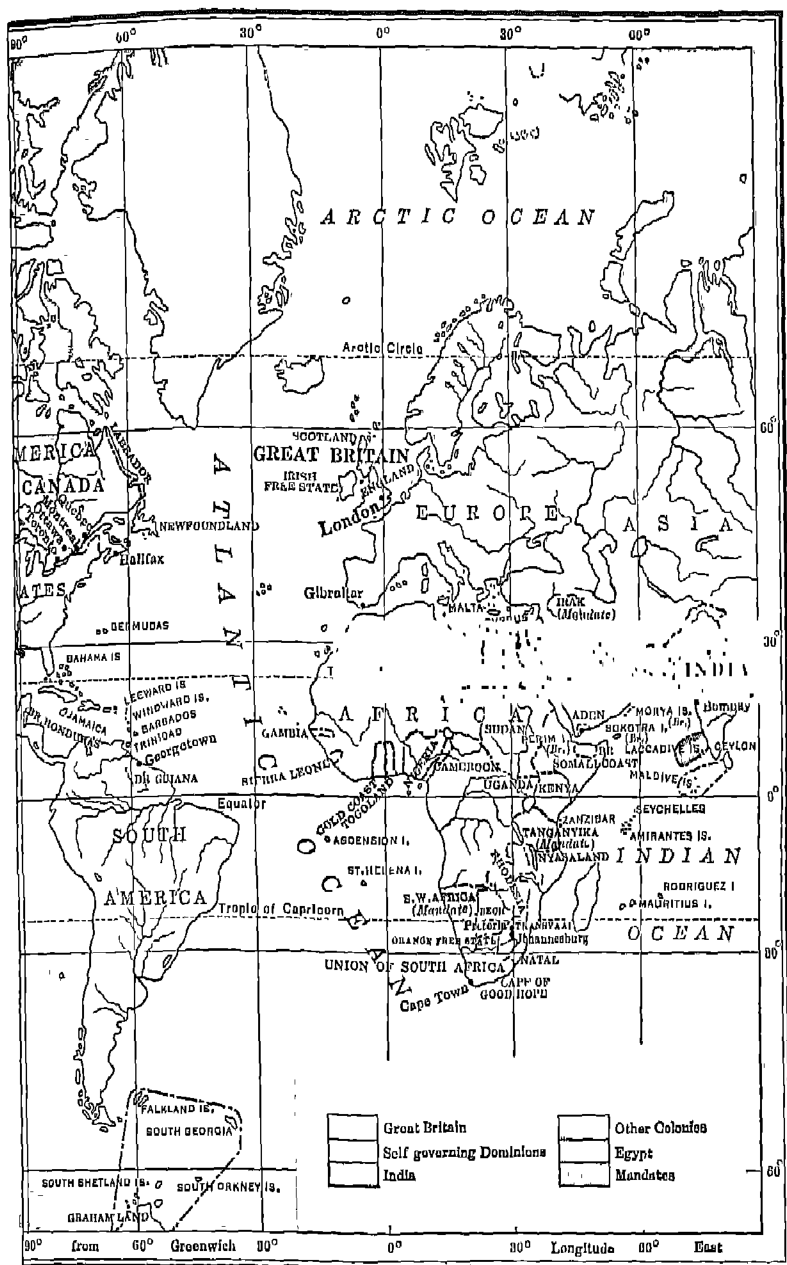
ITS SCATTERED CHARACTER.

This British commonwealth of nations consists of territories in all six continents. In Europe there are the British Isles including Ireland, the Isle of Man, and the Channel Islands, together with Gibraltar, Malta, and Cyprus. In North America there is the Dominion of Canada (with its nine provinces), together with Newfoundland, Jamaica, and various other islands in the West Indies. In Central and South America there are British Honduras, British Guiana, and the Falkland Islands. In Australasia there are the Commonwealth of Australia (with its six states), the Dominion of New Zealand, the crown colony of New Guinea, and various South Pacific islands. In Africa the British territories include not only the Union of South Africa (with its four constituent states), but Rhodesia, Nigeria, Sierra Leone, Gambia, Uganda, Kenya, and Zanzibar together with various other colonies, protectorates, and mandated territories. The Sudan is nominally under the joint control of Great Britain



ARCTIC OCEAN
Arctic Circle
Dawson
ASIA
NORTH A
DOMINION OF
Vancouver
Winnipeg
UNITED ST
Weihaiwei
INDIA
BURMA
HONGKONG
Tropic of Cancer
PACIFIC OCEAN
ANDAMAN IS.
NICOBAR IS.
MALAY STATES
LABUAN
STRAITS SETT.
Singapore
CHRIS
KEELING (COCO IS.
INDIAN OCEAN
Adelaide
Melbourne
Sydney
TASMANIA
Hobart
NEW ZEALAND
NORTH I.
SOUTH I.
CHATHAM IS.
STEWART I.
BOUNTY IS.
ANTIPODES
AUCKLAND I.
MACQUARIE I.
CAMPBELL I.
Labuan Colony, Christmas I and Keeling Is. are annexed to Singapore Settlement, a part of the Straits Settlements Crown Colony
ANTARCTIC OCEAN
Wms. Eng. Co., N. Y.
90° Longitude 120° East 160° 180° 160° Longitude 120° West

THE BRITISH



ARCTIC OCEAN
Arctic Circle
SCOTLAND
GREAT BRITAIN
IRISH FREE STATE
ENGLAND
London
EUROPE
ASIA
AMERICA
CANADA
LABRADOR
Quebec
Montreal
Ottawa
Toronto
NEWFOUNDLAND
Halifax
ATES
ATLANTIC OCEAN
BERMUDAS
BAHAMA IS
LEEWARD IS
WINDWARD IS.
BARBADOS
TRINIDAD
JAMAICA
BR. HONDURAS
Georgetown
BR. GUIANA
Gibraltar
MALTA
IRAK
(Mandate)
INDIA
Bombay
AFRICA
GAMBIA
SIERRA LEONE
GOLD COAST
TOGOLAND
NIGERIA
CAMEROON
SUDAN
ADEN
KURIA MURIA IS.
SOKOTRA I.
PERIM I.
BR. SOMALI COAST
LACCADIVE IS.
CEYLON
MALDIVE IS.
UGANDA
KENYA
Equator
ZANZIBAR
SEYCHELLES
TANGANYIKA
(Mandate)
NYASALAND
AMIRANTES IS.
RHODESIA
INDIAN OCEAN
ASCENSION I.
ST. HELENA I.
SOUTH AMERICA
S.W. AFRICA
(Mandate)
Pretoria
TRANSVAAL
Johannesburg
ORANGE FREE STATE
RODRIGUEZ I
MAURITIUS I.
Tropic of Capricorn
UNION OF SOUTH AFRICA
NATAL
CAPE OF GOOD HOPE
Cape Town
FALKLAND IS.
SOUTH GEORGIA
SOUTH SHETLAND IS.
SOUTH ORKNEY IS.
GRAHAM LAND
Great Britain
Self governing Dominions
India
Other Colonies
Egypt
Mandates
90° from 60° Greenwich 30° 0° 30° Longitude 60° East

EMPIRE

and Egypt, but since 1924 Britain has assumed the major jurisdiction over this vast area.

In Asia the Indian empire, including the protected states, is the most important member of the British commonwealth, but Ceylon, the Straits Settlements, the Malay States, Sarawak, North Borneo, and Hongkong are also included within the list of British territories. Palestine and Iraq (Mesopotamia) are likewise, for the moment at any rate, under British supervision.[1] Egypt, before the outbreak of the World War, was technically a part of the Turkish empire but virtually under British suzerainty. When the Turks cast in their lot with the Germans the British government declared a protectorate over Egypt and this status continued until some years after the close of the World War, when a series of Anglo-Egyptian agreements conceded to Egypt the rank of an independent state, subject to various reservations.[2]

NATURE OF THE IMPERIAL DEVELOPMENT.

The growth of Greater Britain is one of the epics of history, yet it was not planned or premeditated. Rather it was accomplished in a prolonged fit of absent-mindedness. England expanded without a policy of expansion. A commercial and industrial nation by reason of geographical good fortune, she naturally became a maritime and naval power. Her merchants traded to distant lands; her people made settlements there; and her navy was able to protect them. It was not the British government that created the empire; it was the British people. The great exodus of Englishmen was not inspired or encouraged by the government. In English colonization the trader and the emigrant went first; the government came lumbering along in the rear. Someone has said that the British empire was conquered by the Irish in order that it might be governed by the English for the benefit of the Scotch. That remark is too laconic to be literally true, yet it points to the fact that all three races have taken a hand in discovering, conquering, governing, and exploiting this vast dominion over palm and pine.

THE OLD AND NEW BRITISH EMPIRES

Historically the growth of the overseas empire falls into two general periods. The first extended from 1600 (when the British East India

[1] See *below*, p. 392, *note*.

[2] These are only the more important items in the list. The minor ones are also shown on the accompanying map.

Company was organized) down to 1783, when the Treaty of 1783 recognized the independence of the United States. During this era of nearly two centuries Great Britain conquered Canada from France, secured for her traders a free hand in India, and founded thirteen colonies along the Atlantic seaboard. The loss of these colonies was a seemingly irreparable disaster to the imperial cause, but it taught the British government some lessons that proved to be worth the cost. These lessons were turned to useful account during the second period (from 1783 to the present day) in which an even more extensive range of territories has been acquired. The later acquisitions have been made in a variety of ways—by discovery and colonization (as in Australasia), by conquest (as in Africa), and by the peaceful expansion of territories in which a foothold had already been acquired (as in Canada and India). The British commonwealth of today is vaster in extent and more populous than the one which was rent asunder by the American Revolution.

THE TWO GREAT PERIODS OF EMPIRE-BUILDING.

The American Revolution is the most conspicuous landmark in the history of Greater Britain. It closed one era and opened another. It taught the mother country a lesson, as has been said, but not the lesson that most Americans would have expected England to learn from the happenings of 1776–1783 There is no basis for the common belief that the American War of Independence impelled Britain to give her remaining colonies a full measure of political freedom. The colonies which did not revolt, but remained within the empire, obtained no substantial concessions in the way of self-government as an outcome of the Revolutionary war. Their political organization stood unaltered; their governors continued to be appointed from London and remained independent of colonial control. No British colony received a full measure of self-government for more than a half-century after the founding of the United States. The struggle for self-government had to be fought over again, as it was in Canada during the years 1835–1840.

THE AMERICAN REVOLUTION AS A DIVIDING POINT

The lesson which Great Britain did learn from her experience with the thirteen American colonies, however, was in relation to the control of trade. Therein the British authorities rightly interpreted the underlying causes of the Revolution. It was a series of economic grievances that led the American colonists to rebel. No doubt

WHAT BRITAIN LEARNED FROM THE REVOLUTION.

there were some political grievances also, but these could probably have been remedied without an armed revolt. The American colonists did not take up arms because they wanted their governors to be responsible to the legislature, or because they desired manhood suffrage. They did not endow themselves with these things after the Revolution. What they resented was British interference with their trade and economic life. The British government, when the Revolution was over, appreciated the force of this grievance, and the remaining colonies were treated with a new liberality in matters of trade.

THE NEW COMMERCIAL POLICY.

It was in this sense that the American Revolution paved the way for the upbuilding of a new British empire. It sounded the death knell of the Navigation Acts It gave a body blow to the whole mercantilist doctrine. As between economic self-determination and political self-government the former is the more important, although both logically go together. And Great Britain has now given both types of freedom to her dominions. Ireland, Canada, Australia, New Zealand, and South Africa are to all intents self-governing nations. By the Statute of Westminster they have been given virtually complete autonomy. The length to which a dominion may go, and still keep within the terms of this statute, is demonstrated by the new Irish constitution.

THE DIVERSITY OF STATES AND RACES.

But the British imperial commonwealth does not entirely consist of dominions. In it there are political entities of several other types, including some that are almost impossible to classify. There are colonies of various sorts, protectorates, protected states, mandated territories and condominions. There is British India,—in a class by itself. These territorial units of government are racially as diverse as it is possible for a far-flung empire to be. They comprise great areas with populations almost entirely of European birth or descent, such as Canada and Australia. In others, such as the Union of South Africa, the dominant races are of European ancestry, but there is also a large native element. Throughout the greater portion of the empire the native races far outnumber the Europeans. With this polyglot diversity in race, language, religion, law, economic interests, and social traditions, it is not surprising to find that no two parts of the British commonwealth are governed exactly alike.

BRITISH POSSESSIONS CLASSIFIED

HOW THEY MAY BE CLASSIFIED:

In a broad way, however, all the territories in British connection (apart from the United Kingdom, the Channel Islands, the Isle of Man, and Northern Ireland) may be arranged under eight principal heads:

1. SOUTHERN IRELAND.

First, there is Southern Ireland under the new Irish constitution. From a reading of this remarkable document one would get no inkling of the fact that the territory which has been known as the Irish Free State is within the British commonwealth of nations at all. Not a single reference to British connection appears in it. The succession of George VI was not proclaimed in Southern Ireland. But the new constitution does not, and cannot, alter the terms of the Anglo-Irish Treaty (1921) which specifically provides that Southern Ireland shall remain "within the community of nations forming the British commonwealth of nations." Southern Ireland, it would seem, has gone beyond dominion status and has become a republic associated with the other members of the British commonwealth but not united with them by a common allegiance.

2. THE DOMINIONS.

3. INDIA.

4. SEMI-AUTONOMOUS COLONIES.

Second, there are the various self-governing dominions.[1] These are Canada, Australia, New Zealand, and South Africa. Newfoundland temporarily gave up her dominion status in 1933.[2] *Third*, there is British India which has been given a special status under the Act of 1935 as has already been explained. And, *fourth*, there are various territories which rank as partly self-governing colonies. Southern Rhodesia and Malta, for example, have

[1] The Union of South Africa has gone farther than the other dominions in its assertions of political autonomy but continues the royal allegiance.

[2] Newfoundland ranked as one of the dominions in the British commonwealth until 1934. Owing to financial difficulties, due to a heavy debt and declining revenues, the Newfoundland government appealed to the mother country for help. In 1933 a royal commission under the chairmanship of Lord Amulree investigated the situation and as an outcome of its findings the British government was requested by the Newfoundland legislature to pass an act suspending the Newfoundland constitution and making the island, for the time being, a dependency of the United Kingdom. This action was without precedent in the entire history of British colonial expansion. Today Newfoundland is being governed by a commission of civil service experts appointed by the British crown. It is engaged in rehabilitating the island's finances, reforming its administrative arrangements, and creating a sound system of local government. Success has

been given a very large measure of self-government, but have not yet attained the status of dominions.

Under a *fifth* heading may be grouped various dependencies which have only a limited measure of colonial autonomy, their general administration being under control from London. Some of these colonies, however, have their own legislatures, the upper chamber of which is appointive and the lower chamber elective (Bermuda, the Bahamas, and Barbados). Some have legislative councils of a single chamber in which there are both appointive and elective members. In some of the latter (Ceylon, Cyprus, and Jamaica) the elective members form a majority; in others (Hongkong, Nigeria, and Trinidad) they do not. A few (including Gibraltar, Ashanti, and Basutoland) have no legislative councils at all.

5. CROWN COLONIES.

In a *sixth* category may be placed the protectorates such as North Borneo and Sarawak which are independent and self-governing as respects their own internal affairs, but whose foreign affairs are controlled by Great Britain. Somewhat akin are the protected states in India which, although technically independent under native rulers, are kept under supervision by British ministers-resident. A *seventh* group of territories in which British influence prevails includes what are known as mandated territories. These are governed in trust from the League of Nations, either directly by Great Britain as in the case of Palestine,[1] or by one of the self-governing dominions, as in the case of Western Samoa where the mandate is held by New Zealand. Iraq was given to Great Britain as a mandated territory at the close of the World War, but this arrangement did not prove satisfactory. Accordingly a treaty was concluded between Great Britain and Iraq whereby the latter became an independent state but with the British retaining a guarantee of certain rights and privileges there. In 1932 Iraq became a member of the League of Nations.

6. PROTECTORATES.

7. MANDATED TERRITORIES.

Finally, under an *eighth* heading, there are some territories which

attended its efforts to such an extent that Newfoundlanders are now satisfied that they are out of deep water and are asking to have their old form of government restored

[1] The proposal has been made to divide Palestine into three parts, namely, an independent Arab state (to the south), an independent Jewish state (on the coast to the north), and a continued British mandated territory which would include Jerusalem, with a corridor to the sea.

do not come within any of the foregoing categories. The Egyptian Sudan is neither a dominion, a colony, a protectorate, nor a mandated territory. It is technically a condominion, an area governed by Great Britain and Egypt jointly. The New Hebrides are held under a condominion with France. Egypt herself is an independent kingdom, so recognized by Great Britain, but by an agreement whereby the British retain certain important privileges—for example, the right to keep troops in Egypt for the protection of the Suez Canal and of access through Egypt to the Sudan. These privileges, while not incompatible with Egyptian independence, obviously give Great Britain about as much hold upon Egypt as she now has upon Southern Ireland.

8. CONDOMINIONS.

These various political entities, within British connection, may now be considered in somewhat greater detail. The government of Ireland, in its two divisions, has already been outlined. The various dominions had gained their self-governing position long before the Statute of Westminster was enacted by the British parliament in 1931, but this famous enactment not only gave their status official recognition but assured them various additional rights.[1]

THE STATUTE OF WESTMINSTER:

The Statute of Westminster, which has been termed the Magna Carta of the British dominions, includes three important provisions. In the first place it stipulates in its preamble that "inasmuch as the crown is the symbol of the free association of the members of the British commonwealth of nations . . it would be in accord with the established constitutional position of all the members of the commonwealth . . . that any alteration in the law touching the succession to the throne . . . shall hereafter require the assent of the parliaments of all the dominions as well as of the British parliament."[2] Second, it provides that no law passed by a dominion parliament may hereafter be held invalid on the ground that it is repugnant to the laws of the United Kingdom or to any future act of the British parliament. Until 1931 it was the privilege of the crown to veto or disallow, on the advice of the British cabinet, any dominion statute. Such action

1 RELATION OF THE DOMINIONS TO THE ROYAL SUCCESSION.

2. DISALLOWANCE ABOLISHED.

[1] For the text of the statute, with a commentary on each of its provisions, see R. P. Mahaffy, *The Statute of Westminster, 1931* (London, 1932).

[2] As this stipulation appears in the preamble only, and not in the body of the statute, its legal force is doubtful.

was not common but the power was there. It has now disappeared. The governor-general, in each of the dominions, still gives the royal assent to acts passed by the dominion parliament, but like the king in Britain he gives it as a matter of course.

Third, the Statute of Westminster provides that no law passed by the British parliament shall apply to any of the dominions except in cases where the dominion parliament has requested and consented to such legislation. Moreover any British statute or regulation now existing in any of the dominions can be repealed or amended at will by the parliament of the dominion concerned. In other words any British dominion except Canada and Australia can now, by its own action, repeal or amend a constitution given to it by the British parliament. It is under this provision of the Statute of Westminster that Southern Ireland has revamped its constitution and virtually taken itself out of the list of British dominions. In the case of Canada and Australia the various provinces and states which are included in these two dominions are deemed to have an interest in the division of powers between themselves and the federal government which is established by their existing constitutions. Hence it would not be equitable to permit their federal parliaments to amend these constitutions at will, to the detriment of existing provincial or state rights.

3. DOMINION LEGAL SUPREMACY.

The Statute of Westminster does not provide that the governor-general of a British dominion shall be chosen locally but it was agreed at the imperial conference of 1930 that the king, in appointing a governor-general for any dominion, would hereafter be guided by the advice of the ministry in that dominion, not by his cabinet in London. Moreover the statute does not abolish the system of appeals to the judicial committee of the privy council in London but leaves such dominion free to continue this system if it chooses to do so or to abolish it if so desired.[1]

CANADA

Each of the self-governing dominions has a constitution, or what is the equivalent of a constitution, in other words, a comprehensive act of parliament on which its government is based. Canada is the most populous of these dominions. By the census of 1930 it had about ten million people, which is not much more than the population of Penn-

THE DOMINIONS.

CANADA.

[1] For the arrangements now existing as respects such appeals see *above*, pp. 307–309.

sylvania. About one third of the people are of French descent, for the older sections of Canada were originally settled by colonists from France.

The Dominion of Canada was established in 1867 under the provisions of the British North America Act which (with various amendments) still serves as a federal constitution. It was framed by a conference under the leadership of Sir John A. Macdonald who drew much of his political philosophy from Alexander Hamilton. If Macdonald was the father of the Canadian constitution, Alexander Hamilton is entitled to be called its grandfather. For some highly important features of federal government which Hamilton presented to the Philadelphia Convention in 1787, but which failed to gain favor there, were incorporated by Macdonald into his draft of the British North America Act.[1]

ITS CONSTITUTION.

There are three reasons why American students should know something about the governmental system of Canada. Geographical proximity begets interest, or should do so,—and Canada is nearby. In the second place the political problems of the two countries are fundamentally alike, although the attempt has been made to solve some of them in quite different ways. Finally, although Canada is a member of the British commonwealth, her political institutions and life are being heavily influenced by the United States. One might, perhaps, generalize by saying that in the government and political life of Canada most of what has been superimposed is British; but most of what has worked in from the bottom is American. This is especially true of party organization and practical politics.

ITS INTEREST TO AMERICAN STUDENTS.

Under its present constitution the government of Canada bears some resemblance to that of the United States in that there is a formal division of powers between the federal and the provincial governments. Matters of nation-wide importance are placed within the jurisdiction of the dominion authorities; while those of a local character are left to the provincial governments. The British North America Act of 1867, like the Constitution of the United States, contains a definite enumeration of these powers, but in one essential feature the two documents stand in contrast. In the United States all powers not

ITS GENERAL NATURE.

[1] See the author's *American Influences on Canadian Government* (Toronto, 1929), especially pp. 18–22.

definitely granted to the federal government remain with the states; in Canada all powers not definitely reserved to the provinces go to the central government. This difference, however, is not so great as it might appear to be. In the United States the courts, by judicial interpretation, have strengthened the federal government at the expense of the states; in Canada they have strengthened the provincial governments at the expense of the dominion. The balance of authority is therefore not widely different in the two countries.

THE GOVERNOR-GENERAL.

The titular chief executive in Canada is a governor-general appointed by the crown for a five-year term. The appointment has always gone to a member of the British nobility. The governor-general performs substantially the same duties as those imposed upon the king in England. He summons and dissolves the dominion parliament, gives the assent of the crown to legislative measures, and makes appointments to office,—all on the advice of his ministers. These ministers are responsible to the Canadian House of Commons. Canada maintains a high commissioner in London as a medium of communication with the imperial government. She also maintains her own minister in Washington and communicates with the state department through him, not through the British ambassador.

THE CABINET.

The Canadian political system closely follows the English mode in providing for a responsible cabinet. This cabinet is chosen, as in England, by a prime minister whose responsibility to the House of Commons is exactly the same as at Westminster. So the real chief executive of the dominion is not the governor-general but the prime minister, who is invariably the leader of the majority party in the Canadian House of Commons. Each member of the cabinet must have a seat in the Canadian parliament and the whole cabinet must resign, as in England, whenever it loses the confidence of a majority in the House.

THE DOMINION PARLIAMENT.

The parliament of Canada consists of two chambers, a Senate and a House of Commons. Not having a peerage (and having no desire to create one) it was impracticable to model a Canadian Senate on the British House of Lords. Nor was it thought advisable to follow the example of the United States to the extent of having senators chosen by the various provinces.[1] It was decided, therefore, that the Canadian Senate

[1] It will be remembered that at the time the Canadian constitution was being formed (1867) the United States Senate was not regarded as a striking suc-

should be composed of 96 members appointed for life by the governor-general on the advice of the prime minister. Alexander Hamilton, by the way, had urged in 1787 that the United States Senate ought to be composed of members appointed for life. Twenty-four Canadian senators are appointed from each of the four regional areas of the dominion,—Ontario, Quebec, the Maritime provinces, and the Western provinces.

THE CANADIAN SENATE.

Like the Senate of the United States the Canadian upper chamber has concurrent legislative power with the lower house except as regards money measures. There is no provision in Canada, as in Great Britain, for solving a deadlock between the two chambers by having the Commons reenact a measure three times When the Canadian Senate rejects a bill which has passed the House of Commons there is no way of making the will of the latter prevail. In practice, however, important measures have not often been rejected. The Canadian Senate has virtually accepted the doctrine that under ordinary conditions the House of Commons ought to take the chief responsibility for law-making and that its own work should be confined to the revision and perfecting of bills sent up to it. The Senate, therefore, plays no vital part in the government of the dominion. It does not share in the control of the cabinet. Its influence in Canada is certainly no greater, and on the whole it is probably less than that of the House of Lords in Great Britain. All sorts of proposals have been made to reform, and even to abolish, the Canadian Senate but thus far none of them has found much favor.[1]

THE HOUSE OF COMMONS.

The Canadian House of Commons bears a close resemblance to the American House of Representatives. Its members are elected from parliamentary districts or constituencies—one from each. These constituencies are approximately equal in population and redistricting takes place (as in the United States) after every decennial census The total membership of the House of Commons at the present time is 234.[2]

cess. There was a widespread feeling that the equal representation of the states in the Senate had helped to make a peaceful settlement of the slavery issue impossible.

[1] On the organization and powers of this chamber the best book is Robert A. McKay, *The Unreformed Senate of Canada* (Oxford, 1926).

[2] The Canadian constitution provides an ingenious safeguard against such repeated increases in the size of the House of Commons as have taken place in the American House of Representatives. The quota of members from the Prov-

The maximum term during which a House of Commons may sit is five years, but the House may be dissolved at any time by the governor-general on the advice of the prime minister. Such dissolutions, however, have been less frequent than in England.

As respects the suffrage, any British subject twenty-one years of age or over, male or female, is entitled to vote after one year's residence in Canada provided he (or she) has resided in the constituency for two months. And any qualified voter may become a candidate for election. There are no primaries for the selection of candidates, as in the United States. Nominations are made, in each constituency, by party conventions. The voting is by secret ballot and the ballots bear no party designations.

HOW ITS MEMBERS ARE ELECTED

In Canada, as in England, the House of Commons is the real pivot of legislative power. It controls the cabinet. All financial measures must originate in the House, and as a matter of practice most other measures originate there also. Bills are introduced, referred to committees, debated and voted upon, and then go to the Senate for concurrence. A distinction is made, as in the mother of parliaments, between public and private bills. There is a speaker, but the English tradition of reëlecting him to his office so long as he remains a member of the House is not followed in Canada. When a new government comes into power it elects a speaker from its own ranks. The standing rule of the British House of Commons that no proposal to spend public money will be considered unless it is introduced in the name of the crown (that is, by a member of the cabinet) has been adopted in Canada and this gives the cabinet a large measure of control over the whole field of public finance.

ITS POWERS

Political parties exist in Canada as in all other countries having free government. In nomenclature the Canadian parties resemble those of Great Britain, but in their organization and methods they are much more nearly akin to those of the United States. The two major parties call themselves Conservatives and Liberals, but there are several minor parties as well. The Liberals are now in power. But as in England

POLITICAL PARTIES IN CANADA.

ince of Quebec is permanently fixed at 65, the other provinces are entitled to such quotas as their respective populations warrant according to the Quebec ratio Nova Scotia, for example, with about one quarter of the population of Quebec, has 16 members.

the names of the political parties give no real clue to their respective attitudes on matters of public policy. The differences between them, such as they are, do not relate to the fundamentals. The constitution of Canada ignored the existence of political parties and the laws for the most part continue to treat them as wholly outside the mechanics of government. But their influence on the course of public policy is as great as in England or the United States.

THE PROVINCES.

Canada is a federation of provinces, of which there are now nine in all.[1] Each of these nine provinces has its own provincial government consisting of a titular chief executive who is called lieutenant-governor, a provincial prime minister and cabinet, and a provincial legislature. The lieutenant-governor is appointed for a five-year term by the governor-general on the advice of the federal cabinet. The position of lieutenant-governor carries no personal authority inasmuch as all official acts are performed in accordance with the advice of the provincial cabinet which, in turn, is responsible to the legislature. The legislature, which consists in seven provinces of a single chamber, is elected by universal suffrage.[2] Party lines are substantially the same in provincial as in federal politics.

AUSTRALIA

EARLY HISTORY OF AUSTRALIA.

In point of population, Australia comes next among the self-governing dominions. The island became a British possession by discovery and settlement early in the nineteenth century. It was at first deemed to be of little value and was used as a penal colony. In time, however, colonies of free settlers and of liberated prisoners were established in different parts of Australia and these colonies were given a system of partial self-government which eventually widened into complete autonomy. There were six of these colonies and various attempts were made during the last half of the nineteenth century to unite them into a federation but the project did not succeed until 1900, when the Commonwealth of Australia was established by action of the British parliament at the request of the colonial governments. The constitution of the commonwealth was ratified by the people

[1] Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta, and British Columbia.

[2] In Quebec and in Nova Scotia there are two chambers—a legislative council and a legislative assembly, both elective.

and it cannot now be changed except by the assent of a majority of the voters in a majority of the states.

GENERAL STRUCTURE OF ITS GOVERNMENT.

In general the government of the Australian commonwealth somewhat resembles that of Canada although there are a few important differences. A governor-general and a federal cabinet form the executive branch of the government. The governor-general is appointed by the British crown on the nomination of the Australian cabinet. There is a parliament of two chambers called the Senate and the House of Representatives. But the Australian Senate, like that of the United States, is based upon the principle of state equality. It consists of thirty-six senators—six from each state irrespective of population. And the senators are elected, as in America, by state-wide popular vote. The Australian House of Representatives also follows the American model in that it is comprised of members elected from districts which are approximately equal in population, one from each. Universal suffrage has been established throughout the commonwealth. Each of the six Australian states also has its own government, which, in a general way, is similar to that of a Canadian province. But in apportioning powers between the federal and provincial governments the Australian constitution reserves to the states all powers not definitely given to the central government.[1]

SOUTH AFRICA

THE UNION OF SOUTH AFRICA.

The Union of South Africa consists of four provinces (Cape Colony, Natal, the Transvaal, and the Orange Free State) which were united in 1910. This union differs from the federations of Canada and Australia in that it does not rest upon an enumerated division of powers between federal and provincial authorities. The South African constitution gives virtually full and complete authority to the Union parliament. But it reserves some jurisdiction to the provinces and also provides that the Union parliament may delegate to the four provincial governments such powers as it sees fit. In any event all laws enacted by the provincial governments must have the approval of the Union authorities before they become valid. The South African Union, therefore, is a federation in form only. It is the sort of federation that Alexander Hamilton would probably

[1] The best concise description of Australian government is that given in Lord Bryce's *Modern Democracies* (2 vols., New York, 1921), Vol. II, pp. 166–264.

have established in America if he had been given his way in 1787.

The South African government consists of a governor-general, a cabinet, and a bicameral legislature. The Senate is made up of forty members, eight chosen by the legislative council of each province and eight appointed by the governor-general on the advice of his cabinet—all for ten-year terms.[1] The lower chamber, or House of Assembly, is made up of members elected from single districts. Each of the four provinces is governed by an administrator who is appointed by the governor-general, and an elective legislative council.

OTHER OVERSEAS POSSESSIONS

THE PARTLY SELF-GOVERNING COLONIES.

It would take a whole volume to describe the government of those British territories which have a large amount of self-government but not a full measure of it. Southern Rhodesia, for example, enjoys virtually full autonomy except for certain restrictions placed upon its government in the interest of the native population. Malta has full self-government except as regards certain reserve matters such as defense, coinage, external trade, and immigration. In Jamaica the elective representatives of the people control the legislative branch of the government but do not control the executive. British Honduras, another colony in the Western hemisphere, has a legislative council in which the representatives of the people do not constitute a majority, and St. Helena (famed as the last home of Napoleon) has no legislative council at all From Canada to St. Helena, therefore, the various territories run the whole gamut of colonial government, with all degrees of self-determination and democratic control. But whatever the measure of home rule, or the lack of it, British suzerainty has always aimed at the protection of the native races, the abolition of slavery, the reign of law, the maintenance of order, and the training of the people in the art of government.

THE PROTECTORATES.

Britain has many protectorates and in such territories there is sometimes a great gulf between theory and fact. Ostensibly a protectorate is not subject to control as regards its own internal affairs; it is controlled only as respects its foreign relations. But the fact is that internal affairs and foreign affairs cannot always be sharply differentiated, and the

[1] It may be of interest to mention that four of the appointive senators have been named to represent the colored population.

protecting country always gives itself the benefit of any doubt in the matter. Its minister-resident, or resident-general, or whatever he may be called, acquires the habit of tendering advice to the native rulers on all manner of problems, both internal and external. He becomes, to all intents, the directing factor in the government of the protectorate. The status of a protectorate is not usually permanent; often it is merely a prelude to annexation, but it has sometimes ripened into independence.

SPHERES OF INFLUENCE.

Protectorates should not be confounded with spheres of influence. A sphere of influence is a backward area in which the interest of some civilized state has become recognized as paramount. When two European countries find themselves engaged in rivalry for the exploitation of some undeveloped territory, and drifting into open rupture because of this rivalry, they try to reach an agreement dividing the territory into spheres so that each of the exploiters may keep from interfering with the other. Prior to the World War, for example, Great Britain and Russia agreed to delimit spheres of influence in Persia. As respects countries which are not immediately concerned, these agreements have no binding force. They depend for their validity upon the power of the countries which acquire the spheres of influence. Nor do such agreements establish any rights of sovereignty, although the dominant country sometimes imposes a directing hand on the political affairs of the territory in question.

MANDATED TERRITORIES.

Mandated territories offer a new complication to the student of colonial government. At the close of the World War there arose the question as to what disposal should be made of the former German colonies and of certain territories belonging to the old Turkish empire. At the end of previous great wars such territories had generally been divided among the victors. In 1919, however, it was felt desirable to try some new plan which would be more in keeping with the high principles of altruism which the victorious Allies professed. So it was agreed in the Treaty of Versailles that the territories wrested from Germany and Turkey should be handed over to the League of Nations on the understanding that each should be administered, on behalf of the League, by one of its member-countries. Mandates for the government of the various territories were thus awarded to the victorious countries, to Great Britain and France particularly. The United States was offered a mandate for Armenia but declined

it. The mandatory, or country holding the mandate, is in the position of a trustee for the League of Nations, to which it reports periodically. The future of these mandated territories is obviously bound up, therefore, with the continuance of the League.[1]

IMPERIAL CONTROL

In principle the British parliament has supreme and unfettered power over all British territories, no matter what their status It is not permanently bound by the provisions of constitutions which it has granted to Canada, Australia, and other dominions. As a matter of constitutional theory the British parliament has the right to repeal any of them at its discretion. As a matter of fact, on the other hand, it would not venture either to repeal or amend the organic law of any self-governing dominion save on request from the government of that dominion itself. So here we have, once more, an illustration of the wide divergence which exists between the law and the usages of British government. Parliament retains the fiction of complete supremacy, for it could repeal the Statute of Westminster, but in the case of the dominions has surrendered the entire substance of legislative power.

THE SUPREMACY OF PARLIAMENT.

The London government deals with the overseas British territories through three ministerial offices. The secretary of state for India is the main channel of communication for that empire, including the protected states. The secretary of state for dominion affairs has immediate charge of relations with the self-governing dominions and with Southern Rhodesia. He has also served as the medium of communication with the government at Dublin. The secretary of

THE CHANNELS OF IMPERIAL COÖRDINATION.

[1] Palestine is held under a mandate granted by the League of Nations. This mandate imposes upon Great Britain the duty of making such political and administrative arrangements as will assure the establishment of a Jewish national home, the development of self-governing institutions, including local self-government, and the protection of all civil and religious liberties. Under this mandate Great Britain has appointed a high commissioner for Palestine. He is assisted by an appointive council. There is also a legislative council, in which a majority of the members are indirectly elected by the people.

Mesopotamia (Iraq) was also placed under a League mandate to Britain, but the people of the former country made a strenuous objection to this arrangement. Hence an alliance was concluded between the two governments. Under the terms of this agreement Great Britain is to render advice and assistance without impairing the independence of Mesopotamia. This agreement has been accepted by the League of Nations in lieu of the earlier provision.

state for the colonies takes care of all the rest, including the protectorates, the mandated territories, and the condominions. All three secretaries of state are members of the British cabinet. As heads of their respective departments they go out of office whenever a new cabinet comes in but their subordinate officials are permanent. Hence a change in ministry does not involve any appreciable shift in colonial policy because the broad outlines of imperial connection are accepted by the nation as a whole and are not, in the main, a theme of party controversy.

THE REPRESENTATION OF THE DOMINIONS IN LONDON.

The self-governing dominions maintain in London officials who are known as high commissioners, and some of the provinces or states maintain agents-general there also. These officials, who are appointed and paid by their respective governments, have functions which are chiefly of a commercial character; but they are also utilized by their own governments in dealing with the imperial authorities Their functions are steadily becoming more diplomatic in character. Some of the dominions also maintain agents in other countries. These agents virtually serve as ministers or consuls, although they are not members of the British diplomatic or consular service.

THE MATTER OF TREATIES.

This raises the question whether a treaty can be made between one of the self-governing dominions and a foreign state. Is Canada, for example, an independent country to that extent? The answer is that although the treaty-making power is ordinarily exercised through the British government, there is nothing to prevent the making of treaties by the dominions, and at least one important treaty has been concluded between Canada and the United States without the intervention of any British official.

ENGLISH SENTIMENT IN RELATION TO THE EMPIRE.

During the early Victorian period, about the middle of the nineteenth century, there was a widespread feeling in Great Britain (especially among the Whigs and Liberals) that distant colonies like Canada, Australia, and South Africa were of dubious value to the mother country. They claimed the protection of the British army and navy; they drew the home government into their quarrels; they desired all the advantages but would give nothing in return. They were like "ripe fruit," as Turgot once said, that would fall from the parent tree whenever they had grown to maturity.

It was taken for granted by many Englishmen that the bestowal of self-government would be merely a stepping-stone to independence. In the course of time, however, this pessimism began to disappear and Englishmen commenced to think in terms of imperialism. This new ardor brought forth a school of imperialistic writers,—writers of history and poetry such as Sir John Seeley and Rudyard Kipling. They wrote and sang about the romance of England's expansion, her dominion over palm and pine, her far-flung battle line, and her shouldering of the white man's burden.

THE PROJECT OF IMPERIAL FEDERATION.

In 1887, on the occasion of Queen Victoria's first jubilee, representatives of all the dominions and colonies were summoned to London and in an atmosphere of festivity a series of conferences between these representatives and the home government were held. The project of an all-empire council or parliament was cautiously broached but nothing came of it. Ten years later, at the Diamond Jubilee of 1897 there was another conference, and more discussions; likewise with no tangible results. Far-called, the navies melted away; the captains and the kings departed; the colonial prime ministers sailed for home; and the dream of an imperial federation remained a dream. It was suggested, however, that such conferences should be called from time to time to discuss problems of imperial interest.

THE IMPERIAL CONFERENCES.

This suggestion was adopted and the imperial conference has now become an established institution. It ordinarily meets every four years, but may be specially summoned at any time, such as a royal coronation. It has a permanent secretariat in London. At these conferences the prime minister of Great Britain presides. The other members are the secretaries of state for the dominions, for the colonies, and for India, the prime minister and one or more other representatives from Canada, Australia, South Africa, and New Zealand, together with certain representatives from India—making more than twenty members in all. The imperial conference has no constitutional powers; its function is merely to deliberate upon matters affecting Great Britain as a whole and to secure informal agreements as to common action. It cannot bind any government But its importance has grown steadily; its resolutions are of significance to the widely scattered areas concerned, and it may be looked upon as a factor in imperial administration. The latest conference was held immediately following the coronation of George VI in 1937.

On one recent occasion, moreover, an imperial economic conference has been held. This was at Ottawa in 1932. Attended by delegates from Great Britain and all the dominions, its purpose was to discuss means whereby trade within the British commonwealth of nations might be profitably increased. At this conference agreements were made between the mother country and various individual dominions (not including the Irish Free State), as a result of which Great Britain gained some advantages for her manufactured goods while the dominions obtained compensatory concessions, notably as respects the importation of their agricultural products into Great Britain free of duty. Incidentally, the negotiations disclosed the large dependence of the dominions upon Great Britain for a market, and also for loans Canada, by virtue of her close economic relations with the United States, formed the only exception.

THE OTTAWA ECONOMIC CONFERENCE, 1932.

The net gains from the Ottawa conference in the way of inter-imperial trade were not large, however, because the various dominions were desirous of building up industries within their own borders and hence were reluctant to lower their tariffs appreciably in favor of imports from Great Britain. By these agreements, which were to run for five years, Great Britain gave the dominions more than she obtained from them. British agriculture has suffered from the competition of dominion products while British industry has not gained much from the concessions made by the dominions. The Ottawa conference was successful, however, in arranging agreements between various dominions whereby each gave the other certain trade concessions. Canada, for example, made such agreements with the Union of South Africa and with the Irish Free State.

ITS RESULTS.

At the Paris peace conference of 1919 Canada, Australia, New Zealand, and South Africa were represented by their own delegations. The covenant of the League of Nations provided, moreover, that the dominions should be admitted as regular members of the League, with the right to maintain separate representatives in the League's assembly. This arrangement, which gave Greater Britain six votes in the assembly of the League (or seven votes with the admission of the Irish Free State) was strongly criticized in the United States, but the various dominions insisted upon it as a mark of their self-governing status and they have

THE BRITISH DOMINIONS AND THE LEAGUE OF NATIONS.

been represented in the League assembly since its establishment.

"A king of shreds and patches," quoth Shakespeare, although he did not have George VI in mind The red patches, big and little, which indicate British suzerainty on world maps, are not held together by force but by the intangible bond of common allegiance and common ideals. These ties may be light as air but they are strong as iron. Every square mile of this territory, whether it be kingdom or dominion, colony or rock bound fortress, is vested with a common allegiance. The king is king in Canada, in Rhodesia, in New Zealand, in Hongkong, in Gibraltar. The monarchy, therefore, is the visible symbol of unity throughout this vast dispersion which Britons call their imperial commonwealth. And a token of unity is needed, for it is amazing how few men on this earth have minds which can really grasp a political conception such as sovereignty, the commonwealth, or imperial federation.

THE TIES THAT HOLD THE EMPIRE.

The community of political ideals is also a tie that binds the British commonwealth of nations together, although it does not manifest itself in any symbolic form. Everywhere there is a consciousness of these common ideals and a conviction that they can only be preserved by holding together.

> Grave mother of majestic works
> From her isle-altar gazing down,
> Who, god-like, grasps the triple forks
> And, king-like, wears the crown.

It is an adventure full of fascination, this attempt to reconcile democracy and self-government with the need for common action in matters affecting the whole. "I have remarked again and again," said Cleon, "that democracy cannot govern an empire." It may be true. The future of the British empire will decide. History affords us no clue to prophecy, for the world has never seen a commonwealth like this one.

HISTORY. The growth of the British commonwealth is exhaustively covered in *The Cambridge History of the British Empire*, in eight volumes, each with an elaborate bibliography. For a general survey of British colonial expansion the reader may be referred to J. A. Williamson, *A Short History of British Expansion* (2 vols., London, 1930), and to H. E. Egerton, *Short History of British Colonial Policy* (New York, 1898). This volume is supplemented by

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CHAPTER XXII

A SURVEY OF FRENCH CONSTITUTIONAL HISTORY

Nothing is ever changed in France, there is only one Frenchman more.—*Comte d'Artois.*

France is an old country but a young republic, a republic less than three score and ten years of age. The present political institutions of republican France, most of them, are not of republican birth. They are derived, in whole or in part, from the various monarchies, empires, and dictatorships that have had their day in France during the past five hundred years. It is sometimes said that France is a country with the physique of a republic, the spirit of a monarchy, and the temperament of an empire. The French Republic, in other words, is a republic with a past. Its visage is well indented by hangovers from the days of Bourbons and Bonapartes.

A REPUBLIC WITH A PAST.

Ask an Englishman when the middle ages came to an end and he will give you the year 1500 as an approximate date. He calls Cromwell a modern statesman, Shakespeare a modern dramatist, and Milton a modern poet. He is right—so far as his own country is concerned. England entered the modern era about the time that America was discovered. But if you ask a Frenchman he will tell you that the middle ages did not come to an end until 1789, inasmuch as feudalism, despotism, and the other institutions of mediaevalism were not ousted from France until that date. To him the Revolution of 1789 is the most epoch-marking event in the history of the world. "It came like the law on Sinai," wrote Sainte Beuve, "amid thunder and lightning." So, when the Frenchman speaks of modern France he means post-revolutionary France. Modern France is very modern.

FRANCE BEGAN HER MODERN HISTORY WITH THE REVOLUTION.

THE SHOCK OF THE REVOLUTION

It is not surprising that this should be so, for the Great Revolution shook France as nothing else has ever done. English history contains

nothing like it. There have been revolutions in England, but never a revolution like this. France, prior to 1789, was a despotism. All political authority centered in an absolute monarch. There was no constitution, no parliament, no ministry responsible to the people. Once upon a time France had possessed the makings of a parliament, an assembly of three "estates"—one representing the clergy, another the nobility, and the third the common people. But the Estates-General met only when the king chose to issue his summons, and as time went on the intervals between meetings became steadily greater. During the long period intervening between 1614 and 1789 no meetings were called at all. So the Estates-General, unlike the English parliament, never developed into a check upon the royal prerogative. The king made the laws and the ordinances; he also enforced them, and punished violations on his own authority. The classic boast imputed to Louis XIV—"L'état c'est moi"—embodied no mere fiction of royal power. The king and the state were one. He was legislature, executive, and judiciary combined; the people had no share in their national government.

CHARACTERISTICS OF THE OLD RÉGIME: 1. NO LIBERTY.

Nor did the people of France, in pre-revolutionary days, control their own local government They had no elective councils in province or town or parish. Everywhere the officials of the king were in evidence—intendants, subdelegates, procureurs-du-roi, grand voyers, bailiffs, and tax-gatherers. In the king's name they ruled city and country alike, responsible to no one but the monarch himself. Securities for the rights of individuals were unknown. There was no freedom of worship, or of speech, or of petition, no writ of habeas corpus, no trial by jury. By a *lettre de cachet* anyone might be arrested, thrown into jail, and kept in jail, without specific accusation, for any length of time. In a word there was no *liberty*.

OR SELF-GOVERNMENT.

Nor was this all. The country was honeycombed with special privileges of every sort. The clergy paid no taxes although the church possessed enormous wealth. It was said to own one seventh of all the land in France. The nobility paid only nominal sums in taxation. The entire burden fell upon the bourgeois and peasant classes. This burden was very heavy, for the royal government spent money in prodigious sums. To make things worse the privilege of collecting the taxes was farmed out to profiteers who bid high sums for it and

2. NO EQUALITY.

then had to recoup themselves by mercilessly squeezing the people. The higher positions in the government service, as well as in the army and the navy, were reserved for members of the noblesse. Many public offices, including judgeships, were literally sold at auction and when purchased became hereditary. This meant that only the rich could aspire to positions of honor or emolument in the service of the state. In a word there was no *equality*.

3. NO FRATERNITY.

Finally, the nation possessed no national consciousness. The kingdom had been built up out of provinces, and the old provincial sentiment remained strong. People continued to think of themselves as Burgundians, or Normans, or Bretons rather than as Frenchmen. There was no system of common law, common throughout the land, as in England. Each province, each part of a province, had its own body of customary law, and no two of them were alike. A traveller in France, it was said, changed laws as often as he changed horses. As between town and rural district, moreover, there was little intercourse and no fraternal feeling. The townsman despised the peasant; the peasant scorned him in return. Trade between town and country was throttled by the octroi or municipal tariff which levied duties at the town gates on all merchandise passing from one place to another. Goods going from Havre to Paris paid duties at ten points on the way. Even within the towns the old gilds or close corporations of artisans continued to control industry and to foster all sorts of class animosity. Thus the various parts of the country and the various elements among the masses of the people were kept at arm's length from each other. In a word there was no *fraternity*.

THE REVOLUTION OF 1789.

Liberty, Equality, Fraternity thus became the watchwords of the surging tide which overwhelmed the old régime in 1789. The Revolution began in Paris. On July 14, 1789, the mobs stormed the grim structure known as the Bastile and turned the prisoners loose. Within a few weeks the old order had been levelled to the ground everywhere. A revolutionary government was thereupon set up and a constituent assembly proceeded to clear away the débris. Eventually the king and queen were sent to the guillotine; the institution of nobility was abolished, the Church was disestablished and its land confiscated; all special privileges and immunities were declared at an end; the Gregorian calendar was displaced by a new system of months and years; the towns were given complete home rule; the country was deluged

with paper money (assignats), and the guillotine was kept working overtime.[1]

Meanwhile, as the ground was being cleared, the work of rebuilding began. The revolution produced a series of constitutions.

THE VARIOUS REVOLUTIONARY CONSTITUTIONS (1789–1795).

The first was a Declaration of the Rights of Man, promulgated by the assembly in 1789. It was supplemented by various decrees which endeavored to carry the principles of the declaration into effect. Then, in 1791, came a more elaborate constitution providing for a responsible ministry and a single legislative chamber chosen for two years from men of property by indirect election. Although the Declaration of 1789 had asserted that "men are born with equal rights and remain so," the suffrage was now limited to those who paid a certain sum in taxes. But this constitution did not go far enough for such radicals as Danton and Robespierre who wanted a real democracy of the proletariat. So it was replaced in 1793 by a new and much more striking document which formally set up the First French Republic with a single chamber and an executive committee. This constitution was submitted to the people and ratified by them, but was never put into effect. Robespierre became the virtual dictator of France and inaugurated the Red Terror, but he soon fell from power and the moderates gained control. Thereupon a new constitution was drafted, submitted to the people, and ratified by them in 1795.

This constitution of 1795 provided for a legislature of two chambers, chosen by voters with property qualifications. It established

THE DIRECTORY (1795–1799).

a plural executive, or directory as it was called, composed of five members, chosen by the legislature. Strong men were placed upon this directory and the country began to recover from its revolutionary chaos. The events of 1795 marked the turn of the tide. From revolution and radicalism the pendulum now began its swing to conservation and centralization.

The government of the directory continued to function for four years, but it never had a fair chance because France was hard

THE CONSULATE (1799–1804).

pressed by foreign enemies during the whole of this period. In 1799 it was replaced by the consulate with Citizen Bonaparte installed as First Consul.

[1] The reader who wishes a succinct account of these great changes will find it in C. D. Hazen, *The French Revolution* (New York, 1932).

The young Corsican had risen rapidly through a series of military victories and by a *coup d'état* took the reins of power into his own hand. Bonaparte was not an enthusiast for democratic government. He did not believe in popular constitutions. On one occasion he remarked that an ideal constitution ought to be "short and obscure." Hence, in 1800, the constitution of the directory was supplanted by a new one in which virtually all power was centralized into a single hand.

THE NAPOLEONIC RECONSTRUCTION

The Man of Destiny was now master of France. In 1802 he had himself proclaimed first consul for life and two years later (after submitting the question to a vote of the people), he became emperor. Thus, within the space of fifteen years, France had run the whole cycle of Bourbon despotism, revolutionary chaos, makeshift republic, and Bonapartist empire. Both as consul and as emperor Napoleon found it necessary to do a lot of reorganizing. He centralized power in his own hands until he had far more of it than any of the old Bourbon kings ever possessed. The whole system of local government was welded into a perfect pyramid. By his Concordat with the Papacy, Napoleon restored the Church to something like its old status. He could not give back its lands, for these had been divided, and had passed into the hands of many small owners; but it was understood that the Church would be supported out of the public funds. "How can you have order in a state," he said, "without religion?" Believing also in social distinctions he revived the institution of nobility and founded the Legion of Honor. But the most striking among Napoleon's non-military achievements was the compilation of a series of law codes and the systematization of legal procedure throughout the country. These codes have remained in operation, without radical change, to the present day.

THE FIRST EMPIRE (1804–1815).

NAPOLEON'S WORK.

Many other things were accomplished, by way of reconstruction, during the Napoleonic era. Unhappily the dramatic character of Bonaparte's military operations have served to dull the world's appreciation of him as a civil leader. Most Americans think of the first Napoleon as a war lord of vaunting ambitions and intermittent genius who lost the battle of Waterloo; but he was in fact the most far-visioned and

HIS RANK AS A STATESMAN.

constructive statesman of modern times. He was a man of marvellous political imagination and great organizing power. Courage and force were his immortalizing qualities. He was never afraid of a thing because it was new, nor was he disdainful of anything because it was old. France owes more to Napoleon's pen than to Napoleon's sword. The results of his statesmanship are still redounding to the benefit of his people while the fruits of his military victories have long since been bartered away.

THE NAPOLEONIC LEGEND.

The Napoleonic legend still survives, moreover, and is an invisible factor in the politics of France. From time to time, when the country gets discouraged or depressed, Frenchmen are roused and thrilled by recollection of the days when the Corsican eagle flew across the Mediterranean to Egypt and over the snows to Moscow. They think of Marengo and Wagram, of Jena and Austerlitz. The memory of these great days is more than a memory to France. It is an eternal stimulus to the national pride. But, after all, these Napoleonic crusades achieved nothing in the way of permanent additions to French territory. They merely salted the deserts and steppes with the bones of Frenchmen. Legends pay little heed to profit and loss.

FRANCE BETWEEN TWO BONAPARTES

THE BOURBON RESTORATION (1815–1830).

The First Empire came to an end in 1814–1815 by reason of its military collapse. After his defeat at Waterloo, Napoleon was packed off to St. Helena where he grumbled his way to illness and death. Meanwhile the old Bourbon dynasty was restored to power in France. The new king, a younger brother of Louis XVI who was guillotined during the Revolution, was expected to be the head of a constitutional monarchy patterned after that of England. So a written constitution was prepared and put into operation. This charter attempted to reproduce the unwritten constitution of Great Britain; hence it contained provision for a House of Peers, an elective House of Commons, and a ministry. It was assumed that the ministers, as in England, would hold themselves responsible to the elective chamber. There was to be trial by jury, freedom of the press, writs of habeas corpus, and all the traditional English securities for personal liberty.

But Frenchmen soon discovered that it is far easier to transplant

the forms than the traditions of a government. British institutions would not take root in Gallic soil, even though the new environment was only thirty miles away. It has often been said of the Bourbons that they could "learn nothing, and forget nothing." At any rate Louis XVIII never caught the spirit of the constitution which he swore to uphold. Neither did his brother, Charles X, who succeeded him in 1824.[1] The new king tried to maintain in office a ministry which did not have the confidence of the elective chamber, and thereby brought about a parliamentary deadlock. To break this deadlock he tried to set aside the provisions of the constitution, and by so doing precipitated the "July Revolution" of 1830. This resulted in the king's abdication and France once more faced the problem of providing herself with a new government. The time was not ripe for a restoration of the republic, and anyhow most Frenchmen believed that the monarch, not the monarchy, had been at fault.

WHY IT FAILED.

So they kept the monarchy and changed the line of kings. Louis Philippe, of the House of Orleans, was put on the throne with the understanding that he would be a strictly constitutional ruler. But owing to the multiplicity of political parties in France the English system of ministerial responsibility would not function. Frenchmen grew tired of a government conducted by bourgeois politicians who spent their time in ceaseless squabbles. The old glories seemed to have departed; the country was sinking to the status of a second-rate power. "La France s'ennuyait," as Lamartine said, and the sentiment in favor of a republic grew apace. Had France been England her parliament would have solved the problem by a Great Reform Act, but neither Louis Philippe nor his parliamentary advisers could take a large view of the situation. They let matters drift from bad to worse until, in 1848, Paris once more flamed into revolution. The king quickly relinquished his throne and the Second Republic was inaugurated.

THE ORLEANS MONARCHY (1830–1848).

The constitution of the Second Republic, framed by a convention of delegates in American fashion, provided for a scheme of government that was simplicity itself. France was now to have a president directly elected for a four-year term by manhood suffrage. The ministers were to be

THE SECOND REPUBLIC (1848–1852).

[1] For a full account see F. B. Artz, *France under the Bourbon Restoration* (Cambridge, Mass., 1931).

named by the president. And there was to be an elective parliament with a single chamber. No more would France try to pattern her political institutions after those of England A simple constitution and direct democracy would provide a cure for the nation's troubles. And a strong president would regain for France a place of leadership among the powers of Europe.

THE PROBLEM OF FINDING A PRESIDENT.

But where would France find a strong man, a man on horseback, to be president of this Second Republic? Right here the new constitution ran full tilt into its first great problem because there was no outstanding popular idol in sight. France in 1848 had some statesmen who were old and discredited, and some who were young and unknown; but she had no one whose qualities marked him as the man of the hour. But there was one ambitious fellow who saw in this situation a rare opportunity. Louis Napoleon, a nephew of the great Corsican, had been living in England, an exile. As head of the family and heir to the Bonapartist tradition he quickly seized the occasion, crossed to France and got himself elected a member of the assembly. Then he announced his candidacy for the presidential office. He had no visible qualifications for the post except the heritage of a great name. But the Napoleonic legend and his lavish promises were enough. The country rallied to this soldier of fortune and he was elected by an overwhelming majority.

LOUIS NAPOLEON AND THE COUP D'ÉTAT OF 1851.

As might have been expected, the election of a Bonaparte to the presidency was a prelude to the end of the new republic. Louis Napoleon had un-republican ambitions. His heart was set on becoming emperor. "With the name I bear," he said, "I must either be on a throne or in a prison." Although elected president for only four years, and constitutionally ineligible for reëlection, he had no intention of ever quitting his post of power. Accordingly, as his term drew to a close, he decided upon a characteristically Bonapartist stroke. Having secured the support of the army he moved large bodies of troops to Paris and arrested all the political leaders who were known to be opposed to him. Then, on the morning of December 2, 1851, the people of the city awoke to find the billboards placarded with proclamations announcing that the president's term had been extended to ten years. There was a slight show of popular opposition, but it was unorganized and speedily repressed. Less than a year later the president submitted to

the people of France the question whether he should become emperor. This plebiscite was so adroitly manipulated and controlled that the people gave an affirmative vote and in November, 1852, the Second Republic was transformed into the Second Empire with Napoleon III at its head.[1]

THE SECOND EMPIRE AND ITS COLLAPSE

THE SECOND EMPIRE (1852–1870)

Under Napoleon III some important changes were made in the plan of government. The double-chamber system was revived, with a Senate made up of high officials and of senators appointed for life by the emperor. The lower house, or assembly, although ostensibly chosen on a manhood suffrage basis, never proved to be a mirror of public opinion. The elections were controlled in ways which ensured the choice of the "official" candidates. One method was to provide that the ballots were not to be counted when the polls closed, but were to be taken home by the election officer, kept overnight, and counted in the morning. In the interval between the closing and the counting most of the election officers did their duty.

THE CENTRALIZATION OF POLITICAL POWER.

Anyhow it did not matter much if some opposition crept into the chamber of deputies. The emperor had his ministers, appointed by himself, but they were not responsible to either branch of parliament. The imperial power became as fully centralized under Napoleon III as it had been in the days preceding Waterloo. Napoleon III had none of his uncle's brilliancy either as a statesman or soldier, but he was nobody's fool and he managed to stay on the revived imperial throne for eighteen years.[2]

ITS EARLY POPULARITY AND LATER DECADENCE.

The Second Empire lasted from 1852 to 1870. It covered an era of unexampled business prosperity in France, and this prosperity proved to be (as prosperity always does) a great solvent of political discontent. During his first eight or ten years the emperor was popular with the Church, with the army, with the business interests, and to some extent with the masses of the people. But after 1860 his star began to wane. The country began to grow restless under the

[1] The title "Napoleon II" was thus posthumously reserved for the young King of Rome, the only son of Napoleon I.

[2] Mr. H. G. Wells, in his *Outline of History* (Vol. II, p. 438), makes the rather startling assertion that Napoleon III was "a much more supple and intelligent man" than Napoleon I No historian would agree with any such evaluation.

rigorous autocracy of the government. Napoleon III attempted to divert attention from domestic affairs by plunging the country into various diplomatic and military ventures—the Crimean War, the Franco-Italian-Austrian War of 1859, the expedition to Mexico, and a gesture on the Rhine in 1866. These manoeuvers succeeded for a time, but the incessant stimulus brought its inevitable reaction. Popular restlessness became so disturbing that various concessions to the principle of ministerial responsibility had ultimately to be made, particularly on the eve of the War with Prussia in 1870. This war, which Napoleon III entered so confidently, brought his own rule to an end.[1] For the emperor, with a large portion of his army, was cornered by the Germans at Sedan and forced to surrender. Napoleon III was subsequently released by his German captors and went to England where he died in 1875.

THE COLLAPSE OF 1870.

When the news of this surrender reached Paris, the capital blew up with indignation. The Empress Eugénie, who had been serving as regent while her husband was at the front, fled to England. A committee of national defense took control of affairs and the Third Republic was proclaimed without any general agreement, however, as to what sort of republic it should be. Many of those who helped to proclaim it were monarchists at heart, while some others, at the opposite extreme, were communists who desired a proletarian dictatorship.

THE THIRD REPUBLIC

PROVISIONAL GOVERNMENT OF THE THIRD REPUBLIC.

Meanwhile the committee set itself up as a provisional government. The immediate problem was to solidify resistance to the Germans and to save Paris from capture. As it turned out, however, the military disasters were too great to be retrieved by any eleventh-hour effort. The Germans advanced to Paris, surrounded the city, and forced it to capitulate in the early days of 1871. The surrender was followed by an armistice during which the French people elected a national assembly empowered to pass upon the terms of peace. This body, chosen by manhood suffrage, convened at Bordeaux in February, 1871 Its members were elected for no definite term and tacitly assumed unlimited powers. Most of them were avowed monarchists

[1] The causes of the Franco-German War of 1870 are too complicated for narration here. They are set forth in all the general European histories of the period.

who had little interest in republican government and were strongly opposed to radical changes of any sort.

The make-up of this national assembly was a great disappointment to the radical elements, especially in Paris. They showed their resentment by setting up a revolutionary government in the city, thus endeavoring to set Paris free from control by the new national government. A brief but sanguinary civil war resulted and after several weeks of hard fighting around Paris the government of the Commune (as it was called) came to an end. Thus the capital was subjected to a double siege and capture within a single year, first by German and then by French troops. The communist interlude produced a reaction throughout France and made certain that the Third Republic, if a republic at all, would be a definitely conservative one.

THE COMMUNE—A RED INTERLUDE.

Having quelled the Commune the national assembly was now able to go ahead. Its first task was to complete the peace negotiations with the Germans and get them out of France. This unpleasant mission was entrusted to Adolphe Thiers, whom the assembly appointed chief executive of France with the proviso that his authority might be revoked at any time. Thiers became, in effect, temporary President of the Republic, while retaining his seat as a member of the assembly. Under his direction the terms of peace were arranged and ratified. The Germans annexed Alsace-Lorraine and imposed a war indemnity of five billion gold francs to be paid by the French government within five years. Portions of France were to remain occupied by German troops until the last installment had been paid. No extension of time was requested by the French, and there were no attempts at evasion. The whole indemnity was raised and paid in gold, or the equivalent of gold, within thirty-six months from the signing of the treaty. This action stands in sharp contrast with Germany's reparation procedure after the close of the World War.

THE NATIONAL ASSEMBLY AND THE TERMS OF PEACE.

The assembly also turned its attention to the task of framing a new constitution, and here some serious difficulties were encountered. With a membership of more than 700 it was too cumbrous a body for constitution-making. A majority of its members, moreover, were monarchists or imperialists at heart, and did not desire a republic as a permanent

FRAMING A NEW CONSTITUTION.

institution. These anti-republicans were in sufficient numbers to have adopted any sort of monarchical or imperial constitution if they had only been able to agree among themselves. But they were divided—some wanted a Bourbon monarchy, some an Orleans monarchy, and some a restoration of the Bonapartes. This disunion enabled the republicans to keep control of the assembly, and in the late summer of 1871 it passed the Rivet Law, so called, by which Thiers was definitely named President of the Republic with the provision that both he and his ministers should be responsible to the assembly for all their official acts. This action virtually committed the Third Republic to the principle of executive responsibility after the English fashion. Thiers continued to be a member of the assembly and frequently mounted the tribune to advocate his own views, thereby creating a rather anomalous situation—a titular chief executive trying to be prime minister and floor leader as well.

THE RIVET LAW (1871).

For nearly two years France drifted along under this makeshift arrangement, without a constitution and without any clear decision as to her ultimate form of government. On one occasion the assembly gave consideration to a complete draft of a republican constitution but rejected it by the solid vote of the monarchists who were able to compose their quarrels for the moment. On the other hand these monarchists were helpless when it came to uniting on an alternative constitution. They could agree to destroy but not to construct. Thiers, as a member of the assembly, became involved in these squabbles and in his impatience swung over to the republican side, urging his own views so earnestly that the assembly, in 1873, restricted his right of addressing it. When further friction developed he resigned in a huff. The assembly quickly accepted the resignation and in his place chose Marshal MacMahon, whose term of office it subsequently fixed at seven years. MacMahon was a soldier who had risen to the highest rank in the army under Napoleon III and his election was everywhere regarded as a clean-cut victory for the anti-republicans

FACTIONAL QUARRELS AND DEAD-LOCK.

THIERS AND MACMAHON.

After MacMahon's election the assembly discussed various plans for a monarchical or imperialist restoration, but could not agree upon any of them although on one occasion it came very close to

doing so.[1] Nor did there seem to be any chance that a republican constitution could secure the support of a majority. In this dilemma the assembly appointed a committee to prepare individual resolutions (*projets*), in the hope that various questions relating to the form of government might be settled one by one. This proved to be a way out of the difficulty and in 1875 the assembly was able to adopt, one by one, a series of three "constitutional laws." Then, having made provision whereby these laws might be easily amended, it went out of existence. These three laws were all that the Third Republic obtained in the way of a constitution from this long-lived assembly. They still form the constitution of France,—if three unjointed laws can be called a constitution.[2]

THE MAKESHIFT CONSTITUTION (1875).

THE CONSTITUTIONAL LAWS OF 1875

The French constitution of 1875 differs from that of any other nation. It is unlike the constitution of Great Britain because it was drawn and put into force within a single year by an authorized group of constitution-makers. It is unlike the Constitution of the United States in that it comprises not one document but three. In form it is a piecemeal, half-hearted, unfinished affair. These constitutional laws of 1875 bear visible evidence of the spirit in which they were drafted. Their provisions are poorly arranged and crudely worded. They are silent on many matters of the highest importance, for example, the rights of the citizens, the organization of the courts, the selection of the ministers, and even the method of constituting the Chamber of Deputies.

ITS NATURE.

It is not that Frenchmen are novices in the art of making con-

[1] In the summer of 1873 a majority was in sight for a plan by which France should again become a limited monarchy with a Bourbon (the Comte de Chambord) on the throne, and an Orleanist (the Comte de Paris) to have the right of succession. Everything was settled except the flag The Bourbon claimant held out for the old fleur-de-lis, while the Orleanists insisted upon retaining the tricolor. On this flag question the whole plan foundered.

[2] The Law of February 24, 1875, deals with the Senate; the Law of February 25 relates to the President, the Chamber of Deputies, and the ministry; and the Law of July 16, 1875, explains the relations of the public authorities. The text of these laws may be found in any collection of modern constitutions, for example, in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922), or in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part II, pp. 8–15.

stitutions. At drafting and adopting constitutions they had, in 1875, more experience than any other European people. Between 1789 and 1875 France had no fewer than seven constitutions, each of which was believed by its framers to be a monument of constructive statesmanship and worthy of a long life. The constitution of 1793, for example, was touted by its framers as a paragon. It never went into operation. The Charter of 1814 was extolled as a perfect copy of a perfect model. It died of anaemia when it was only sixteen years old. The constitution of 1848 was regarded by the founders of the Second Republic as the last word in governmental simplicity and effectiveness. It perished while still in its swaddling clothes. The constitution of 1852 was heralded as an instrument through which the old-time glories of France would be revived. It brought the country to humiliation and civil war. The constitution of 1875 differed from all its predecessors in that nobody was proud of it, nobody was willing to be its godfather, nobody thought it would live, nobody regarded it as anything but an unworthy compromise. Its framers, for the first time in the entire history of constitution-making, felt under obligation to apologize for the shabbiness of their work.

HOW IT DIFFERS FROM PREVIOUS FRENCH CONSTITUTIONS.

But they builded better than they knew. Their jerry-built trio of constitutional laws has lasted for a longer time than any of the comprehensive and refined constitutions of earlier days—imperial, monarchical, or republican. This constitution weathered the storm and stress of the World War; it has now rounded out more than three-score years and is still in vigor, although more pretentious constitutions in neighboring lands, both north and south, have gone into the discard.

THE SEQUEL (1875–1938).

What is the reason for this? It is mainly to be found in the fact that the constitution of 1875, unlike all previous French constitutions, did not embody any system of political philosophy and did not sacrifice practicality to principles, as previous French constitutions had done. Nor did it attempt to make the frame of government hard and fast. Rather it left a great array of things to be determined by statute, ordinance, custom, precedent, and growth—in other words "by time and habit" as Washington once said. It did not wipe the old slate clean and begin anew; on the contrary it

REASONS FOR THE LONGEVITY OF THE PRESENT CONSTITUTION.

retained all the governmental institutions which existed prior to 1875, except insofar as they happened to be irreconcilable with the new order. Nothing was needlessly abolished. There was no violent break with the past. There was no borrowing of institutions from abroad. The constitutional laws of 1875 are Gallic in every line. They fitted the needs of their day; they have proved easy to change and to expand. Hence it has come to pass that the Third Republic, born on the morrow of a great disaster, and speeded on its way by men who did not wish it to live, has grown stronger with the lapse of time. During the past twenty-five years of war and reconstruction it has shown itself able to bear the heaviest strain that could be put upon any government.

HOW AMENDMENTS ARE MADE.

France, in 1875, was tired of changing governments by *coups d'état* and revolutions. The framers of the constitutional laws were anxious to provide a non-violent way of shifting the basis of the state whenever it should become desirable. So they made the process of amendment simple,—about as simple as it could be made without entirely abolishing the distinction between "constitutional" and "ordinary" laws. The French constitution may be amended at any time by action of the two legislative chambers, the Senate and the Chamber of Deputies. In other words constitutional amendments and ordinary laws are made by the same legislators, but not in the same way.

THE PROCESS IN DETAIL.

Each chamber, when a proposal to amend the constitution is put forward, decides whether it will go into joint session with the other chamber to decide upon the proposal. If both chambers agree to a joint session the senators and deputies repair to the great hall of the palace at Versailles where they meet as a national assembly. Each senator and each deputy has one equal vote, and an absolute majority in joint session is essential. Either chamber, of course, may decline to join with the other in convoking a session of the national assembly, and in this way each chamber has a veto on any constitutional amendment that may be desired by the other. As a practical matter, therefore, all amendments to the constitutional laws require a majority of those present in each of the two chambers sitting separately, as well as an absolute majority of the two chambers sitting together.

This means that the Constitution of France is much easier to amend

than is the Constitution of the United States. The distinction between constitutional and ordinary laws is still theoretically maintained by the French, although it is not of much practical importance. It takes a majority in both chambers to pass an ordinary law. The same majority is virtually always sufficient to change any provision in the constitution. In 1884 the national assembly adopted a constitutional provision stipulating that the republican form of government must never be made the subject of an amendment, but this stipulation would be no legal barrier if a future national assembly should decide to do what it forbids. There is no way in which a sovereign body can limit its successors. The process of amendment is easy, but this does not mean that it has been freely used. The flexibility of the constitution obviates the need for frequent changes. It is almost always so when a constitution is couched in general terms

IT IS AN EASY PROCEDURE, BUT HAS SELDOM BEEN USED

Since 1875, in fact, the constitutional laws have been amended on three occasions only. The first was in 1879 when an amendment substituted Paris for Versailles as the seat of government. Five years later (1884) one of the constitutional laws—the one relating to the organization of the Senate—was completely revised. More specifically it was provided that the law relating to the organization of the Senate should no longer have the status of a constitutional law but should be an "organic" law, which might be changed like any ordinary statute. Another amendment, made at this same time, provided that no member of the Bourbon, Orleanist, or Bonaparte family should be eligible for election to the presidency. A third stipulated that when the Chamber of Deputies is dissolved a new election must be held within two months. In 1926 a provision was added to the constitution safeguarding the integrity of a fund for amortizing the national debt.

ONLY A FEW AMENDMENTS HAVE BEEN MADE.

One of the terms used in the foregoing paragraph suggests the question· What is an organic law? Wherein does it differ from an ordinary law? There is not much difference other than a sentimental one. An organic law is one which, although open to repeal or amendment by exactly the same process as an ordinary law, is nevertheless regarded as more fundamental than a simple statute. It deals with the framework or mechanism of government. It is, therefore, of more than ordinary importance and has a sort of halo

CONSTITUTIONAL, ORGANIC, AND ORDINARY LAWS COMPARED.

around it. It is not to be changed lightly or without good reason. We have a few statutes in America which roughly correspond to the organic laws of France; the statute of 1886 which establishes the existing rules of succession to the presidency (in case of the death or disability of both President and Vice President) is a good example. Such laws, in France, regulate the method of electing senators and deputies.

Legal sovereignty in France resides with the national assembly, that is, with the two chambers in joint session. When the assembly is convoked there are no limitations upon what it may do. The Senate, being the smaller of the two chambers, and hence liable to be outvoted in a joint session, has always been reluctant to join in a convocation of the assembly until definitely assured as to just what amendments are to be considered. Yet if the national assembly should decide to go beyond the specific amendments that it was convoked to consider, there is nothing to prevent its doing so. For the assembly is the judge of its own powers and no court can declare its actions unconstitutional. Its decisions do not require the approval of the President, nor are they submitted to the people for ratification.

SUPREMACY OF THE NATIONAL ASSEMBLY.

France, during the nineteenth century, served as the world's chief laboratory for political experimentation. The people tried one form of government after another, one constitution after another—only to find themselves disillusioned. Roughly a dozen constitutions trod on each other's heels during the ninety years from 1785 to 1875. The world looked on and shrugged its shoulders. It was a commonplace saying in England that Frenchmen had neither political sense nor sagacity, and that they didn't deserve a stabilized government because they were too philandering in their political fidelity to give any form of government a fair chance. Sixty years ago people were amused by the story of a young tourist who went into a Paris bookshop and asked for "a copy of the French constitution." The old bookseller glowered at him above his spectacles and said, "My son, we don't sell periodical literature here. Go to a news stand!"

EXPERIMENTS HAVE CEASED AND FRANCE HAS SETTLED DOWN.

There would be no point in that witticism today. For sixty-odd years France has lived under one constitution, one form of government. Her people have shown no sign of wavering from the republican cause. The republic, apparently, is here to stay, although in

these days of world-wide ferment there is no predicting how long or how short the life of any government will be.

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See also the references at the close of Chapter XXIII.

CHAPTER XXIII

THE PRESIDENT OF THE REPUBLIC

The old kings of France reigned and governed. The constitutional king . . . reigns but does not govern. The President of the United States governs, but does not reign. It has been reserved for the President of the French Republic neither to reign nor to govern.—*Sir Henry Maine.*

The presidency of the French Republic has been the butt of many epigrams at home and abroad. Clemenceau, who held the prime minister's post during the closing months of the World War, once declared that there were two things for which he could never find any reason, to-wit, "the prostate gland and the French presidency."[1] And the Abbé Lantaigne, more savage in his characterizations, once dismissed the presidency from his writings as "an office with the sole virtue of impotence." Its incumbent, he said, must neither act nor think; if he does either he stands to lose his throne.

THE CHIEF OF STATE.

Yet in spite of all this badinage the fact remains that the President of the Republic is the supreme representative of the executive power in France. He is the chief of state and holds the highest political honor that a great nation can bestow. He sits in the seat of Bourbons and Bonapartes. He is the titular commander-in-chief of the armed forces on land, at sea, and in the air. He is the first citizen of the Republic. It may be quite true that the office does not carry powers commensurate with its dignity, but it is none the less a post which the most eminent statesmen of France have sought and are seeking

HIS HIGH POSITION.

THE PRESIDENTIAL OFFICE

The President of the Republic is not elected by the French people. He is chosen by an absolute majority of the two chambers of the French parliament, sitting together as a national assembly. The idea of having the president elected by popular vote did not find favor with the men who framed the French constitutional laws of 1875. They retained too vivid a recollection of what had happened in 1848, when the people

CHOSEN BY THE NATIONAL ASSEMBLY.

were stampeded into electing a president whose chief ambition was to scuttle the republican form of government and turn France into an empire with himself at its head. It is to be remembered, moreover, that the assembly which adopted these constitutional laws had already elected two presidents, Thiers and MacMahon. Hence they did not establish a new office in 1875 but merely formalized the powers of an office that was already in existence.

TERM AND REËLIGIBILITY.

The presidential term is seven years, and there is no legal barrier to reëlection. Nor is there any popular sentiment against choosing a president to succeed himself. But a reëlection has taken place on one occasion only, although on two other occasions a president would probably have been named for a second term had it not been for his own disinclination to continue in office.[1] Thus the tradition against too long a presidential tenure seems to be ripening in France, as it has done in America, by the aid of voluntary declinations.

METHOD OF ELECTION.

The procedure by which the national assembly chooses the president is laid down in the constitutional law of 1875. Briefly it is as follows: At least one month before the expiration of his term the president must summon the two chambers into joint session as a national assembly. If for any reason he fails to do this, the two chambers are directed to meet of their own accord fifteen days before the expiration of the presidential term. In case the presidency should become vacant by the death or resignation of the incumbent before the expiry of his seven-year term (as happened on six occasions) the two chambers convene immediately without any formal summons and proceed into joint session as a national assembly. The joint session is held at Versailles in a wing of the great château erected by Louis XIV.

THE CAUCUSES WHICH PRECEDE THE VOTE.

The election takes place without nominations, speeches, or discussion. This does not mean, however, that there is no manoeuvering, bargaining, lobbying, and bloc-making in advance of the meeting. There is a great deal of it Caucuses of the various party-groups are held and alliances are made among them. As will be indicated later,

[1] The list of presidents, with their terms of office, is as follows· Thiers, 1871–1873; MacMahon, 1873–1879; Grévy, 1879–1886, second term, 1886–1887, Carnot, 1887–1894; Casimir-Périer, 1894–1895; Faure, 1895–1899; Loubet, 1899–1906, Fallières, 1906–1913, Poincaré, 1913–1920; Deschanel, 1920; Millerand, 1920–1924, Doumergue, 1924–1931; Doumer, 1931–1932; Lebrun, 1932–

there are many political factions in France, but no one of them is strong enough to command a majority in the national assembly. So they try to form combinations and agree upon rival candidates Usually, but not always, the race gets narrowed down to two leading contestants, each supported by a bloc of party-groups, and the assembly merely makes its choice between these two. There is no popular campaign such as takes place in the United States, no primaries or nominating conventions, and no appeal by candidates to the rank and file of the voters. Were any candidate to make his appeal to the people the national assembly would resent his doing so. The voters in France have no share in the election of the chief executive except insofar as they may, by the influence of public opinion, bring pressure to bear on the action of their senators and deputies.

EFFECT OF THE SYSTEM ON THE CALIBER OF THE CANDIDATES.

This system of election does not ordinarily lend itself to the selection of strong, aggressive personalities. The successful candidate must be someone upon whom enough senators and deputies of varying preferences can agree—and it is not the habit of compromisers to pick strong men. Clemenceau once said ironically that he favored a certain candidate because of his "complete insignificance." Vigorous leaders, with minds of their own, do not make good candidates under a system of election by party blocs. Nor, if elected, are such men likely to make good presidents—as the history of the Third Republic has shown on at least two noteworthy occasions.[1]

THE ELECTION PROCEDURE

So the actual election, under ordinary conditions, is merely a dignified ceremony. The senators and deputies, on the day appointed, troop out from Paris to Versailles. The national assembly convenes in its great hall, and is called to order by the president of the Senate. Not infrequently the president of the Senate is himself one of the candidates for the presidency, but he takes the chair all the same. The French see nothing incongruous in having one of the rival candidates preside over a session at which his own election or defeat is to be determined. An urn is then placed on the tribune (a platform from which speakers address the assembly when it meets to discuss constitutional amendments), and the names of all the senators and

[1] In the case of President MacMahon (1877) and President Millerand (1924). See *below*, pp. 422–423, 426–427.

deputies are called by a herald. Inasmuch as there are nearly nine hundred senators and deputies in all, this solemn calling of the roll consumes a good deal of time. As each member's name is reached he walks to the tribune and formally deposits in the urn a slip of paper bearing the name of his choice for the presidency.

Any French citizen is eligible to be chosen unless he has been deprived of his political rights by the judgment of a court, or unless he is a member of a family that has reigned in France during the royalist or imperial epochs. This last-named exclusion was added to the constitution by one of the amendments of 1884. It was dictated, of course, by the fear that some Legitimist, or Orleanist, or Bonaparte might manage to get himself chosen president and thereupon repeat the *coup d'état* of 1851. The constitution does not expressly exclude women from being elected to the presidency; but as yet there is no woman suffrage in France and the national assembly contains no women members.

EXCLUSIONS.

Official tellers, whose duty it is to count the ballots, are drawn by lot from the entire membership of the assembly, and in an adjoining room they commence their work as soon as the last name has been called. If, when the result of the vote is announced, it appears that someone has received an absolute majority of all the votes cast, he is forthwith declared elected; but if no one has met this requirement of an absolute majority, the assembly proceeds to ballot a second time, and if necessary it keeps on balloting like an American party convention until a choice is made. As a rule, however, the first ballot is decisive, because a sufficient bloc has been pledged in advance. On only three occasions has a second ballot been necessary, and in no case has the assembly had to ballot a third time.[1] The newly elected president is then installed at the close of his predecessor's term, but if he has been chosen to fill an unexpected vacancy he takes office at once, for there is no vice president in France.[2] In the interval between the death or resignation of one president and the installation of his successor the council of ministers is vested with the chief executive power and exercises it by the issue of ministerial decrees.

FIRST AND SECOND BALLOTINGS.

Judged by the honors accorded him at his election and there-

[1] Second ballots were required to reëlect Grévy in 1886, to elect Faure in 1895, and to elect Poincaré in 1913.

[2] When chosen to fill an unexpected vacancy a president does not merely serve for the unexpired term. He serves out the full seven years.

after, the President of the Republic is a very exalted personage. He is saluted by one hundred guns (the President of the United States gets only twenty-one); he travels in de luxe trains and glittering brigades of French troops turn out to be reviewed by him wherever he goes. He has all the homage that is accorded to royalty in monarchical countries. During his term he has the use of the Elysée Palace as an executive mansion, and of the Château de Rambouillet as a country residence; he is provided with a presidential box at the opera and has other perquisites of various sorts His salary is 1,800,000 francs per annum (about $70,000 at the present rate of exchange) with an equal amount for household and travelling expenses.

HONORS AND EMOLUMENTS OF THE OFFICE.

THE LINE OF PRESIDENTS

The Third Republic has had fourteen presidents in sixty-six years (1871–1937), so that although the legal term is seven years (with eligibility to reëlection) the actual average has been less than five years. Casimir-Périer and Deschanel resigned after holding office for a few months only. Four others resigned after varying periods of service—Thiers, MacMahon, Grévy, and Millerand. They were virtually forced out of office by the action of hostile parliaments. Three presidents died in office—Carnot, who was assassinated in 1894, Doumer, who met the same fate in 1932, and Faure who died suddenly when his term was a little more than half completed. Only four presidents have closed their tenure of office otherwise than by death or resignation—Loubet, Fallières, Poincaré, and Doumergue. Thus the presidential office has been closely associated with personal and political vicissitudes.

What manner of men have these fourteen presidents of the Republic proved themselves to be? Like the elective chiefs of state in other countries they have been of varying quality.[1] Some have been strong-willed and capable; others mere figureheads; others, again, would be hard to rank in either category. In comparison with American presidents since 1871 there is no one since Thiers who ranks up to the level of Cleveland or Wilson in ability, world reputation, and statesmanship. Whether, on the other hand, the Elysée has sheltered

BRIEF SKETCHES OF THEM.

[1] A clever portrayal of the French presidents, by Professor Albert Guérard, under the heading, "In the Realm of King Log," may be found in *Scribner's Magazine* for February, 1925.

more mediocrities than the White House during the past sixty years is an arguable question,—although hardly worth the arguing.

Adolphe Thiers, the first of the French presidents, was a notable figure, qualified both by personal capacity and long political experience for the highest office in any land. He had been a prime minister in the reign of Louis Philippe and was one of the great historians of the nineteenth century. His patriotism and his devotion to the interests of France were beyond question, as was shown in his handling of the peace negotiations in 1871. Conservative in temperament he was not an avowed republican at the time of his election, but he became one before he resigned the office in 1873. The Republic owes a great deal to Thiers, for he tided it through a very critical time.

THIERS (1871–1873).

As successor to Thiers, the assembly elected a man of altogether different stripe, a soldier of Irish ancestry, a marshal of France and a protégé of Napoleon III, by name Patrice-Maurice MacMahon. The Hibernian flavor of this name calls for a word of explanation. MacMahon's ancestors emigrated from Ireland to France in the seventeenth century. Their descendants became thoroughly Gallicized, but apparently did not lose any of their traditional Celtic fondness for war and politics. Marshal MacMahon made his reputation in the Crimean War and in the War of 1859. Later, he held a high command in the Franco-Prussian War of 1870, but was wounded before the Sedan disaster came. After the war he put down the Commune in Paris.

MACMAHON (1873–1879).

The election of MacMahon was dictated by the royalists and imperialists in the hope that it would be a prelude to the extinction of the Republic. No one imputed to MacMahon the ambition to set himself upon a throne, but it was felt that he would readily make way for a king or emperor if a good opportunity should arise. But although frankly an anti-republican, MacMahon had too high a sense of personal honor to engage in any royalist *coup d'état*, and the hour of destiny kept postponing its arrival. So the election of MacMahon, as it turned out, was not a prelude to the overthrow of the Republic, but a death-blow to royalist ambitions.

REASONS FOR HIS ELECTION.

This brave soldier made a better showing on the battlefield than in the executive chamber. He was blunt, imperious, domineering. Eventually (1877) he came into controversy with the Chamber

of Deputies by virtually repudiating the principle of ministerial responsibility.[1] Urged by the anti-republicans to strain his powers a bit, he endeavored to install and keep in office a ministry which did not have the Chamber's confidence. Thereupon the fiery Léon Gambetta, leader of the republicans, declared that MacMahon must either "give in or give up." And when the Chamber undertook to make the old soldier give in he had neither the desire nor the unscrupulousness to put through a military *coup d'état* as his imperial master had done a quarter of a century before. The breaking point was reached in 1879 when the Chamber asked him to dismiss from the army certain of his former comrades-in-arms who were suspected of being too strongly Bonapartist in their affiliations. Thereupon he resigned from office, a year before his term would have expired.

HIS CONFLICT WITH THE CHAMBER.

AND HIS RESIGNATION (1879).

The next president, Jules Grévy, was neither a scholar nor a soldier but a typical bourgeois and a moderate republican. His election indicated that the Third Republic was getting set. Grévy was a lawyer by profession, seventy-two years of age at the time of his election, shrewd, cautious, slow-moving, and close-fisted to a degree that soon became proverbial. His tenure of the presidential office was a lively one because the Chamber kept upsetting his ministries one after another. Thereupon the trouble-makers came to the front, particularly the redoubtable General Boulanger of whom more will be said a little later.[2] For a time it looked as if France might again pass under the aegis of a military dictator. Grévy was neither popular nor positive, but his native astuteness enabled him to hold the fort. He even managed to secure his own reëlection in 1886, mainly because no strong candidate appeared in the field against him. But his second term was of short duration, for the Wilson scandals forced his resignation before the close of 1887.[3]

GRÉVY (*1879–1887*).

Grévy's successor was a "dark horse" among the presidential candidates. As none of the leading contestants seemed likely to obtain a majority the leaders compromised upon Sadi Carnot, a civil engineer by profession and a former minister of public works. Carnot was the heir to a historic name, his grandfather having been the "organizer

CARNOT (1887–1894).

[1] See also *below*, p. 432.

[2] *Below*, pp. 510–512

[3] For a brief account of these scandals, see *below*, p. 509.

of victory" during the Great Revolution. A cultivated, industrious, and well-intentioned statesman of fair ability, his chief desire was to avoid political strife. But in this he did not succeed. The Boulanger agitation, the Panama scandals, and other high explosives shook the country. Radicals and revolutionaries used the opportunity to stir up trouble. France was overrun with *démolisseurs*. The air became surcharged with rumors of bribery and corruption, involving everyone from ministers down. The whole country seethed with restlessness. Presently one anarchist threw a bomb into the Chamber of Deputies; another stabbed the president and killed him. These outrages brought the nation back to its senses.

THE REACTION AFTER HIS DEATH.

The murder of Carnot was followed (as such tragedies always are) by a wave of popular indignation. The country rang with demands for law and order, for a suppression of radicalism, for the application of the iron hand. There was a reaction to conservatism, and on the crest of this wave a leader of the conservatives was swept into the presidency. This new incumbent was Casimir-Périer, a statesman of high reputation for energy, one whose ancestry, social position, and affiliations seemed to provide a sufficient guarantee that he would be a safe and sane chief executive.

CASIMIR-PÉRIER (1894–1895).

Casimir-Périer was no neophyte in French politics, for he had already served as president of the chamber and as prime minister. But he was too masterful a man to content himself with a career of inactivity. When the country settled back to its normal routine he chafed in his narrow cage. "I cannot reconcile myself," he said, "to the impotence to which I am condemned." Moreover, he was a very sensitive man and could not bear the barbed criticism which it is the habit of the French newspapers to shower upon men in high public office. The Dreyfus affair, which now came to the front, also worried him greatly.[1] Not having sought the presidency, Casimir-Périer saw no reason why he should worry himself to death in an office which had turned out to be so distasteful to him. So he resigned and was out of the presidency within six months from the date of his election.

FAURE (1895–1899).

For the second time in a twelvemonth the national assembly was convened to choose a president On the first ballot the radicals were united while their opponents were not. But the latter closed up their ranks on

[1] See *below*, pp. 512–513.

the second ballot and secured the election of Félix Faure. A man of humble birth, he had risen by his own diligence to be a wealthy shipowner and a member of the ministry. He was known to be a cautious man, and the juncture called for extreme caution, because the Dreyfus case was now turning the whole country into a bedlam. The new president disappointed his friends by allowing himself to be drawn into this bitter controversy, but before it was over he died suddenly, and the Paris gossips added "mysteriously," although there appears to have been no real basis for the rumor that Faure was poisoned by his enemies.

The next three presidents, Loubet, Fallières, and Poincaré, served out their septennates without mishap. Together their terms covered the first two decades of the new century. Loubet and Fallières were unaggressive, self-effacing men who had risen from the ranks of the peasantry. Both had singularly uneventful terms in office, for the grave dangers which had threatened the very existence of the Republic in its earlier days were no longer to be feared. Loubet was occasionally suspected of having opinions of his own, but they never emerged from beneath his tall silk hat. Fallières revived at the executive mansion the bourgeois virtues of economy and thrift, just as Calvin Coolidge did in the White House twenty years later—but with this difference, that Coolidge was admired by his countrymen for it while Fallières got himself cartooned as the country's champion tightwad.[1] Being a sensible old fellow, he rather enjoyed it.

LOUBET (1899–1906) AND FALLIÈRES (1906–1913).

The choice of Raymond Poincaré in 1913 was fortunate. His great abilities were a godsend to France when he found himself faced with the task of carrying the presidency through the World War. There were times, during this great conflict, when "defeatism" seemed to be on the point of getting the upper hand in France. A weak personality in the Elysée during those years would have been a catastrophe. But Poincaré was a steadying influence to the end.

POINCARÉ (1913–1920).

[1] On one occasion, it is said, he subscribed a thousand francs to a relief fund after a catastrophe had occurred in one of the French cities. Madame Fallières reproved him for this largesse, whereupon the President retorted that he was going to even things up by cancelling, on account of the disaster, a scheduled reception at the Elysée. "So I am still ahead of the game," he chuckled, "*J'y gagne encore*," and the expression was seized upon by the chansonniers in every Parisian cabaret.

On his retirement it was generally assumed that the octogenarian Clemenceau, known as "Old Father Victory" by reason of his having served as prime minister during the closing year of the war, would be chosen as his successor. But Clemenceau was an anti-clerical and in his long political career had left a long trail of bruised enemies behind him. These now united to encompass his defeat. They succeeded in forming a bloc behind a rival candidate, Paul Deschanel, and elected him. So the Old Tiger went his way, while the booming of guns welcomed the accession of a journalist-statesman from the next generation.

DESCHANEL (1920).

The new president was young, brilliant, aggressive, and popular. But unhappily his tenure of the office proved to be even shorter and more tragic than that of Casimir-Périer had been. A mental breakdown came upon him with mystifying suddenness and snatched away the prize which he had labored many years to gain. The first public intimation of it came when the President of the Republic was found, early one morning, trudging along the railroad track in his pajamas. He had leaped from a train. They sent him to Rambouillet to recuperate, and he walked out into a lake. Then his friends persuaded him to resign. He was in office but a few months and died soon after he left it.

MILLERAND (1920–1924).

As his successor the assembly chose Alexandre Millerand, a publicist who had figured prominently in French political life for more than twenty years. He had begun his career as a socialist, but later antagonized his socialist friends by entering a bourgeois ministry. Thereafter his rise was steady; he eventually became prime minister and gained the confidence of the conservative elements in the Chamber. Although a heavy, sleepy-eyed, ill-garbed man in appearance there was nothing sluggish in Millerand's mentality, as France soon discovered. He was a man of ideas and of action, although his ideas were not always sound nor were his actions always wise.

HIS PARTISANSHIP AND THE RESULTS.

Millerand began his term with a declaration that the powers of the president ought to be increased. The presidential office, he believed, ought to be approximated to that of the United States. There was nothing new or startling about this: other presidents had said it before. But Millerand intimated that he proposed to put his theory into practice. The opportunity, however, did not arise for a few years because

Poincaré had come back into office as prime minister and the two found it easy to work amicably together. The relations between them became so close, in fact, that the president drew upon himself the hostility of all Poincaré's opponents. They felt that this close alliance with the prime minister's "national bloc" was not in keeping with the political neutrality which the French constitutional system expects the chief of state to maintain.

Accordingly, when Poincaré lost control of the Chamber at the elections of 1924, the incoming Left bloc insisted that the president as well as the prime minister must resign. Millerand at first declined to comply with this demand, but he found that no ministry possessing the confidence of the Chamber could be formed so long as he retained the presidency. There was nothing to do but accept the situation and relinquish his office. In his place the national assembly elected Gaston Doumergue, presiding officer of the Senate, a colorless figure with a negative political record. He served out his term without misfortune and in 1931 gave way to Paul Doumer who was assassinated about a year after his election. The chambers, in joint session, then chose for the presidency Albert Lebrun who had also placed himself in line by serving as the presiding officer of the upper chamber.

DOUMERGUE, DOUMER, AND LEBRUN.

It will be seen, therefore, that men of all sorts have held the chief executive office in France, as they have done in America, and are likely to do in any republic. King Log and King Stork have both had their turn. In France, as in America, the critics complain that great and striking men are ignored for mediocrities. Gambetta, Ferry, Dupuy, Waldeck-Rousseau, and Clemenceau failed to reach the Elysée, even as Webster, Clay, Calhoun, and Blaine failed to reach the White House. The reasons are much the same in both countries. Strong aggressive personalities do not usually make good candidates. By being strong they incur the suspicion of the party leaders. By being aggressive they create too many centers of antagonism. Party leaders prefer "safe" men who will not insist upon coloring the whole government with their own individuality. In France this is almost necessarily the case, for the experience of President Millerand showed that partisanship is wholly out of place in the presidential office. A man of strong political convictions will inevitably try to govern, which is what a French president is not supposed to do.

WHY SO FEW GREAT AND STRIKING MEN?

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WHY SO FEW GREAT AND STRIKING MEN?

The Fathers of the Third Republic made a mistake when they provided, on the one hand, that the president should be chosen by the representatives of the people and on the other hand that he should have only nominal powers. Under such an arrangement there are only two alternatives—either that weak men will be chosen, or that strong men will make trouble. To obtain capacity in any public office you must bestow power. If a country insists upon having a figurehead as its titular chief executive the best way to secure him is by obeying the law of primogeniture. There is some danger that even by taking the eldest son of an eldest son you will occasionally obtain someone with a will of his own (as Great Britain has recently discovered), but the danger is less by this method than by any other.

THE ANSWER IS IN THE NATURE OF THE POST

THE PRESIDENT'S POWERS

If the French president is not expected to govern, what are his powers? In general they are surprisingly like those of the English king. He summons the two chambers of parliament; he may propose laws; he has a suspensory veto on laws passed by the French parliament; he appoints all the higher officials; he negotiates treaties; he sees that the laws are executed; he is the commander-in-chief of the army and navy; he has the power of pardon; and he may dissolve the Chamber of Deputies if the Senate concurs, but there has been no such dissolution for nearly half a century.

POWERS OF THE PRESIDENT: (a) IN FORM.

All these powers are given him by the constitutional laws of France, subject only to one proviso, namely, that they shall be exercised by him on the advice of responsible ministers. But this proviso is an all-important one. It is so important, indeed, that its insertion makes all the difference between real power and the mere shadow of it. Those who have studied the government of England will understand that proposition readily enough. The provision for ministerial responsibility means that France has the parliamentary type of government like England, and not the presidential type of government like the United States. Every official act of the French president must have a ministerial countersignature. The only document that does not require it is his letter of resignation.

(b) IN FACT.

To the mind of the average American the term republic suggests

a particular form of government, namely, the antithesis of monarchy. Anything that calls itself a republic, most Americans seem to think, must be something like the American republic. But there is no magic in terminology. You can have a republic that is a monarchy in everything but name. And that is the sort of republic which the French people have chosen to set up. It is a unitary republic, wholly unlike that of the United States, which is federal. It is a parliamentary republic, wholly unlike that of the United States, which is presidential. It is a republic without a system of checks and balances. It is a republic without a bill of rights, without woman suffrage, without the distractions of a presidential campaign every four years. The student of comparative government will learn more about France from England than from the United States.

A ROYAL ANALOGY.

The President of the French Republic summons the Senate and the Chamber of Deputies for their annual sessions, and prorogues them when their work is done. Both of these things he does on the advice of his ministers. But if he fails to convoke them prior to the second Tuesday in January, the two chambers meet of their own accord. And their sessions must not be brought to an end by the president until they have sat for at least five months. Meanwhile he may adjourn the chambers, but not for more than a month at a time and not more than twice in the same session. All this, of course, differs essentially from American practice, for the President of the United States does not regularly summon, adjourn, or dissolve either branch of Congress.

POWERS IN RELATION TO THE CHAMBERS:

The constitutional laws of 1875 give the French president the right to initiate proposals of legislation; but this means nothing, for he can only initiate through his ministers. And it is simpler for the ministers to bring in the proposals directly. The president does not address either of the two chambers in person, but he may communicate with them by sending messages to be read from the tribune by some member of the ministry. No president during the past fifty years, however, has sent such messages except to express thanks for his election or to announce his resignation. There would be no point in his sending a message of any other sort for it would have to be countersigned by a minister; which means that it would amount to nothing more than a ministe-

1. THE INITIATIVE IN LAWMAKING.

WHAT IT AMOUNTS TO.

rial communication. The French president's initiative in lawmaking is of no greater importance, therefore, than that of the English king.

The French constitution also gives the president a suspensory veto power. When a law has been passed by both branches of the French parliament it does not go into effect at once. It must be officially promulgated, that is, published by the president and declared to be in force. This is ordinarily done within one month, but if parliament designates the law to be urgent the president must promulgate it within three days. If, however, he disapproves the measure, he is empowered to withhold promulgation and return it to the chambers for reconsideration. Then, if they stand their ground, he must promulgate the measure at once. No two-thirds vote of the chambers is necessary in France, as in the United States, to override the president's veto.

2. THE SUSPENSORY VETO.

The suspensory executive veto in France is of no consequence because it is never exercised. No president since 1875 has sent back any measure for reconsideration, and it is not likely that any president ever will. The reason is that he could not take such action except on the advice of his ministers, and these ministers are in control of the French parliament, otherwise they would not be ministers. So, if the ministers disapprove a measure they oppose its passage in the Chamber of Deputies, and if they do not succeed in defeating it they resign from office. They could hardly let such a measure pass both chambers and then advise the president to send it back for reconsideration. The insertion of the suspensory veto power in the French constitutional law of 1875 indicates that its framers did not clearly understand the implications of ministerial responsibility. At any rate the President of the Republic promulgates every law as a matter of routine.

IT IS NEVER EXERCISED.

All this must not be understood to imply, however, that the French executive has no share in the process of lawmaking. The president neither proposes laws nor vetoes laws; but his office has a very considerable part in the elaboration of laws after they are passed. This is because there has been developed in France a form of legislative activity with which Americans are also becoming familiar, namely, the practice of supplementing laws by the issue of ordinances, decrees, executive orders, and administrative instructions. The laws passed by the French parliament are usually couched in general terms. They do

3. THE ORDINANCE POWER.

not try to include every detail or to provide for every contingency that may arise. On the contrary, they lay down certain broad principles and leave the details to be supplied by executive decrees issued in the name of the president.[1]

These presidential decrees must not, of course, modify any substantive provision of the law; but so long as they keep within its general phraseology they can stiffen or liberalize the details at will. Any controversy as to whether the ordinance is out of harmony with the general provisions of the law goes to the highest administrative court for decision, that is, to the council of state.[2] And as a safeguard against later invalidation all ordinances of public administration are now submitted to the council of state for scrutiny before being promulgated. All this gives the executive a good deal of influence upon the details of legislation although one should hasten to add that the president himself takes no responsibility for the drafting of decrees or ordinances. The work is done by his ministers, or, more accurately, by subordinates of the ministers.

THEIR SCOPE.

For the most part the French parliament has been disinclined to confer broad discretionary powers upon the executive branch of the government. But it has done so at times, especially in emergent situations. The most recent occasion was in the spring of 1937 when the Chautemps ministry demanded and obtained, for a limited period, the right to issue decrees without the necessity of keeping them within the bounds of existing laws. A critical situation in French public finance seemed to make the exercise of such powers desirable.

Americans who go to France have observed the billboards covered with *affiches*, embodying decrees issued by ministers, prefects, subprefects, mayors—by officials of all ranks from the president down. This leads them to remark that the French appear to have a free-for-all scheme of lawmaking, and congratulate themselves that there is nothing like that in the U S.A. But they are wrong. There is a good deal of it in the United States. Congress leaves a great many things to be settled by executive orders and regulations Take the immigra-

EXECUTIVE LEGISLATION IN AMERICA.

[1] Most of the general statutes conclude with some such provision as this: "An ordinance of public administration shall determine the measures appropriate for securing the exercise of this law." Sometimes the provision is more specific in prescribing the scope of the ordinance.

[2] See *below*, Chapter XXX.

tion laws, the postal laws, the laws governing interstate commerce, the federal tax laws, and the whole category of "new deal" laws that have been enacted during the past half-dozen years. Executive orders in the United States are not posted upon the billboards, but there are whole volumes of them, as every lawyer knows. When the secretary of the treasury, "by order of the President," issues a set of rules with reference to the reporting of incomes for taxation, he is doing precisely what the French ministers do by ordinance or decree. Executive orders and regulations are rapidly becoming as plentiful in America as in Europe.

4. THE POWER TO DISSOLVE THE CHAMBER.

THE AFFAIR OF MAY 16.

The President of the French Republic, with the approval of the Senate, has power to dissolve the Chamber of Deputies at any time, but only in one instance has there been such a dissolution. This was on the occasion of the famous Seize Mai in 1877 when President MacMahon appealed to the country in the hope that it would support his attempt to keep a reactionary ministry in power. But the country refused to uphold the president's action and by so doing ultimately forced him to resign.

THE DOCTRINE ESTABLISHED THEREBY.

Thereby was established the principle that a president who dissolves the Chamber gives his own tenure of office as a hostage to success. If a ministry cannot retain control of a majority in the Chamber of Deputies it must not, according to the usages of French government, advise the president to dissolve the Chamber and hold a new election. It is not the custom in France, as in England, to regard the ministers as having a right to appeal from the Chamber to the electorate. Frenchmen regard such action as having the flavor of a *coup d'état.* So, if a ministry loses control of a majority in the Chamber, it must resign. On the other hand, if it should advise a dissolution while still retaining control of the Chamber, the president would have to proceed in accordance with this advice, and seek the Senate's concurrence; but it is hard to imagine a French ministry doing anything of the sort.

5. THE APPOINTING POWER

All civil officials, all officers of the army and the navy, are appointed in the name of the president. But the actual appointing power resides in France just where it resides in England. In neither country is there any personal discretion on the part of the titular chief executive. In France all the higher officials of administration are nominated to

the president by his ministers, and are then formally appointed by presidential decree. It is true that the president sometimes recommends certain candidates to the favorable attention of the ministers, just as any citizen of the Republic has the right to do; but the ministers are under no obligation to heed his recommendations. An appointment is virtually made when the ministers agree on it, and sometimes it is publicly announced before the presidential decree has been prepared. Casimir-Périer, during his short and fretful term of office, complained that his first knowledge of high appointments occasionally came to him through the morning newspapers, the ministerial nominations reaching him later in the day

SUBORDINATE APPOINTMENTS.

Appointments to subordinate posts are made by individual ministers who themselves sign and promulgate the decrees of appointments. The president, on the advice of his ministers, may also remove officials from office, subject to a few constitutional exceptions. Ordinarily no new positions may be created except by action of parliament, which alone has power to appropriate money for salaries; but in certain contingencies new offices may be established by presidential decree. Parliament also prescribes the qualification for every office, and it has dealt with such matters at great length. In France, as in other countries, the power to grant pardons is given to the chief executive. This authority he exercises, in all cases, on the advice of the minister of justice. The constitution expressly provides, however, that an amnesty (that is, a general pardon to all offenders of a designated class) must have the assent of both chambers.

6. THE PRESIDENT AS COMMANDER-IN-CHIEF.

The President of the Republic is commander-in-chief of the army, the navy, and the air forces. On the advice of the minister of war and the minister of marine he determines where each unit of the armed forces shall be stationed But the size of the military, naval, and air establishments is determined by parliament which fixes the annual quota of recruits and appropriates the money required by all branches of the service. By the provisions of the French constitutional laws a declaration of war requires the assent of both chambers; but it is self-evident that the ministers, who control both the diplomatic policy and the disposition of the armed forces, may create a situation in which the chambers have no alternative but to give this assent. The same is true in the United States where Congress alone can declare war, but where the president and his

cabinet can force a controversy to a point at which no congressional discretion would remain.

In international relations, however, the President of the Republic is a figure of far less importance than is the President of the United States. It is true that ambassadors who come to Paris as the diplomatic representatives of other countries are accredited to him. It is also true that, in form at any rate, he appoints the French ambassadors at other capitals. The instructions to these diplomatic representatives are also given in his name. But the actual framing of the instructions is in the hands of the minister of foreign affairs and his immediate subordinates. So it is with treaties. They are negotiated, in the name of the president, by the same minister. They are signed by the minister of foreign affairs or by somebody whom this minister designates. As a matter of courtesy the president is kept informed regarding the course of diplomatic affairs and the negotiation of treaties. As a matter of courtesy, also, the ministers often seek his opinion, but they are under no obligation to be guided by it.

7. HIS RELATION TO FOREIGN AFFAIRS.

It is not a constitutional requirement in France, nor yet does usage require that all treaties shall be laid before parliament for ratification. The terms of treaties need not be communicated to the chambers if the "interest and safety of the state" require them to be kept secret; but treaties of peace, treaties of commerce, treaties which involve financial obligations, and those which relate to the personal status or the property rights of French citizens in foreign countries do not become effective until they have been communicated to both chambers and ratified by a majority vote in both The same is true of treaties which involve any change in the boundaries of territories belonging to France[1] But military agreements and treaties of alliance do not come within the foregoing category and they have usually been kept secret. The terms of the entente with England prior to the World War, for example, were never submitted to the French parliament. But the Covenant of the League of Nations, to which France is now a party, requires that all treaties (including treaties of alliance) must be registered with the secretariat of the League and made public

TREATIES.

The French president is not amenable to the jurisdiction of the ordinary courts. He may not be arrested, tried, or condemned for any offense, civil or criminal. But provision is made for his impeachment in case he is charged with the crime of high treason.

The charge must be brought by the Chamber of Deputies, and the impeachment is tried by the Senate. A majority is sufficient to convict, and no limit is placed upon the penalty which may be imposed. In both these respects the French procedure differs from that laid down by the Constitution of the United States which requires a two-thirds vote for conviction and restricts the penalty to removal from office and disqualification. No President of the French Republic has ever been impeached.

HOW THE PRESIDENT MAY BE REMOVED FROM OFFICE.

The narrowness of the president's part in legislation, in the making of appointments, and in the conduct of foreign affairs must not be overemphasized. For be it borne in mind that the president chooses the prime minister (who, in turn, selects the other ministers) and he sometimes finds himself able to exercise some discretion in making the choice. He is not always under obligation to choose a designated individual as his prime minister. This is because there is no dominant party in the French Chamber but only a dominant bloc. And this bloc may contain more than one leader who is in a position to command its support. On such occasions the president may use his own judgment in selecting a prime minister, but these occasions are becoming less common and in any event his range of choice is never very wide. Usually he confers with the presiding officers of both chambers, obtains their advice as to the man who is best qualified to form a new ministry, and then follows it Remember, too, that the president is himself no tyro in practical politics. He has had to do with parties and factions and blocs. And not often does he fail to pick the right man, that is, a prime minister who can command a majority.

THE PRESIDENT AND THE PRIME MINISTER

Many Frenchmen are far from satisfied with the rôle which the constitutional laws have given to their chief of state. "It is a fundamental principle of the constitution," says one cynical writer, "that the president shall hunt rabbits and not concern himself with affairs of government" But three and a half million francs per annum would seem to be a high price to pay for a rabbit-hunter, who is not always an expert at that.[1] So there are some who believe that the presi-

THE FUTURE OF THE PRESIDENTIAL OFFICE.

[1] It is the president's obligation to hold official shooting parties at Rambouillet, even though he may be very gun-shy himself. Some years ago it was gossiped all over France that a certain general owed his promotion to the fact that he

dential office should either be abolished altogether, or else made a position of real power, as it is in America. From time to time the various radical parties have urged the substitution of a plural executive as in Switzerland, and on one occasion a constitutional amendment to this end was proposed in the national assembly, but it was ruled out of order. Of late years the proposal to abolish the presidency has been dropped and the suggestion that its powers be increased has been obtaining more serious discussion.

THE ALTERNATIVES.

But nobody has been able to suggest a way of increasing the president's authority without changing both the spirit and the form of French government. A ministry must be responsible either to the chief executive or to the legislative body. It cannot be responsible to both,[9] for no ministry can serve two masters. There is no way to increase the authority of the president except by taking power from the ministers, and through them from parliament. This, of course, the French parliament is not in the least inclined to do. Far from showing any disposition to relinquish their powers, the chambers have steadily striven to usurp what little authority the president has not already lost.

WHERE THE DIFFICULTY COMES.

It was thought in some quarters that the election of Poincaré to the presidency in 1913 would be followed by a rise in the prestige of the office, for Poincaré was the ablest and best-equipped statesman who had gone to the Elysée since the time of Thiers. But even under Poincaré the powers of the presidency did not expand. Again, in 1920, when Millerand rode to the palace amid the booming of a hundred guns it was predicted that here at last was a man who would not fear to put the issue to the test. But the prophets were once more astray as the triumph of the Chamber demonstrated in 1924. When that body forced Millerand out of office, before his term was half run, it settled the question of political supremacy for some time to come. So the President of the Republic remains, and doubtless will remain, a *roi fainéant*,—a phantom king without a crown.

The position and powers of the president are fully discussed in Adhémar Esmein, *Droit constitutionnel français* (8th edition, 2 vols., Paris, 1927), Vol. I,

had been riddled, *a posteriori*, with rabbit-shot from a gun in the hands of an erratic chief of state who persuaded the minister of war to salve the wounded [illegible] feelings by an advance in rank.

pp. 32–207, Maurice Hauriou, *Précis de droit constitutionnel* (2nd edition, Paris, 1929), Léon Duguit, *Traité de droit constitutionnel* (2nd edition, 5 vols., Paris, 1921–1925), as well as in J. Barthélemy and P. Duez, *Traité de droit constitutionnel* (revised edition, Paris, 1933).

Material may also be found in G. de Lubersac, *Les pouvoirs constitutionnels du Président de la République* (Paris, 1911), Jean Devaux, *Le régime des décrets* (Paris, 1926), Henri Leyret, *Le président de la république* (Paris, 1912), E. M. Sait, *The Government and Politics of France* (New York, 1920), chap. ii, Robert Valeur, "France" in R. L. Buell, editor, *Democratic Governments in Europe* (New York, 1935), chap. ii, and Herman Finer, *The Theory and Practice of Modern Government* (2 vols., New York, 1932), Vol. II, pp. 1128–1144.

On the characteristics of the presidents see E. A. Vizetelly, *Republican France: Her Presidents, Statesmen, Policy, Vicissitudes and Social Life* (London, 1914), H. L. Middleton, *The French Political System* (New York, 1933), chap. ix, and the various histories of the Third Republic mentioned at the close of the preceding chapter.

CHAPTER XXIV

THE MINISTRY AND THE ADMINISTRATIVE SYSTEM

France is governed, eight months of the year by a parliament, and four months of the year by a ministry.—*Émile Faguet.*

THE DERIVATION OF A TERM.

Many years ago Raymond Poincaré, at that time minister of finances, was strolling along a country road in one of the French provinces when he heard a voice cry out from behind him; "Get along, you confounded minister." Less surprised at being insulted than at being recognized, he turned around and saw a peasant trying to make a donkey move faster. "There's no making this minister go," growled the peasant. Thus M. Poincaré learned that in certain corners of France an ass is called a *ministre*, not out of disrespect for this humble beast of burden, but because he is the chief servant of the peasantry, entrusted with all manner of work that needs to be done. And after all, Poincaré goes on to ask, are not cabinet ministers the servants of the nation? For the term minister, in Latin, means the lowliest, just as its antithesis (magister) means the greatest.

THE BASIS OF A MINISTER'S RESPONSIBILITY.

The ministers of the Republic are the servants of the people, accountable to the representatives of the people in parliament. In France, as has been shown, the president is chosen by the two chambers, but is not responsible to either of them. He cannot be brought to task for an official act. There is only one way in which the chambers can directly exert their power upon the president, which is by impeaching him for high treason. The President of the Republic is thus in the position of a constitutional monarch. He can do no wrong, or at any rate no wrong that is cognizable in the ordinary way. But if the president stands above the reach of the chambers, his ministers do not, and it is through them that the French parliament exercises a full and uninterrupted control over the president's official acts. In England this control is the outcome of usage, in France it rests upon the explicit terms of a constitutional law.

The constitutional laws of 1875 provide (1) that "every act of the president shall be countersigned by a minister," and (2) that "the ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts." Here, in thirty-three words, is an attempt to set down the essential principles of cabinet responsibility as they have been slowly evolved in England during a period of several hundred years. The chief of state is not responsible to the representatives of the people, but he must act through ministers who are responsible. Thus the French constitution, in explicit terms, requires the ministers to exercise the functions of the presidency just as in England usage requires the cabinet to exercise the functions of the crown. In the United States, by way of contrast, there is no requirement, either in the constitution or by usage, that the president's orders shall be countersigned by anyone who is responsible to Congress.

WHAT THE FRENCH CONSTITUTION NOW PROVIDES.

ORGANIZATION OF THE MINISTRY

The French constitutional laws make mention of a council of ministers, but do not prescribe how many ministers there shall be, or how they shall be chosen. Everybody assumed that the president would appoint them, and he has done so. But although the president *appoints* the ministers this does not mean that he *selects* them. He selects only the prime minister, who, in turn, picks all the others. The official title, by the way, is not prime minister, but president of the council of ministers. It will serve the purpose of clarity, however, to use the shorter, unofficial term in this discussion. As for the procedure in selecting the prime minister, it is much like that followed in England. The president picks his man and requests him to undertake the task of getting together a ministry which can command the confidence of parliament. That done, he merely awaits the outcome.

HOW A PRIME MINISTER IS SELECTED.

In making his selection of a prime minister the President of the Republic does not usually have, as a practical matter, any wide freedom of choice; but he has more latitude than is given to the king in Great Britain. There the king must send for the recognized leader of the opposition in parliament. But in France there is often no recognized leader of the opposition, or, to put it more accurately, there may be several who have approximately equal claims

TO WHAT EXTENT MAY THE PRESIDENT PICK AND CHOOSE?

to be regarded as leaders. This is because there are so many party groups in the Chamber of Deputies, each with its own leader, and sometimes with more than one leader. Several parties are usually combined into a bloc; but the bloc does not always have a single leader who is so recognized by all those composing it. In such cases the President of the Republic is able to use some discretion in determining which one of these various leaders he will summon to form a new ministry.

THE LOGICAL CHOICE.

His task is somewhat simplified by the fact that the exigencies of the moment usually point to some one individual as the logical successor of an outgoing premier. If the president is in doubt he confers with those who are best able to judge the relative strength of the various party groups and takes their advice as to the individual most likely to succeed in gathering a majority behind him. More particularly he consults with the president of the Senate and the president of the Chamber of Deputies. They know the twists and turns of party alignment in the respective chambers over which they preside.

OCCASIONALLY HE HAS DISCRETION.

The President of the Republic is assumed to be a neutral in politics; he must show no favoritism. It is his business to pick someone who can make the grade, and he is open to criticism if he does not do it at the first attempt. Occasionally he is fortunate enough to have available two or three good politicians, any one of whom would probably be able to form a working coalition among the various party groups. In that case the president can use his own judgment and summon any one of them. But this opportunity does not come to him very often.

THE PROCESS OF FORMING A MINISTRY.

Having settled upon his man, the President of the Republic summons him to the Elysée and requests him to form a ministry. The request may be declined, as has not infrequently happened, whereupon the president turns to someone else. There have been times, indeed, when two or three declinations have followed in quick succession. But as a rule the president gains a provisional acceptance from the first statesman whom he summons, and the work of forming the ministry begins.

The prospective prime minister hastens to confer with the leaders of several party groups, and by offering each group one or more representatives in his ministry endeavors to assure himself of a majority in the Chamber of Deputies. According to the gossip

that one reads in the Paris newspapers during a ministerial crisis, all his hours are spent in a hurried round of interviews, overtures, pourparlers, and solicitations. He finds that one leader will come into his ministry if another is kept out, or that he will stay out unless another is brought in. The *démarches* may go on for several days before the prime minister succeeds in getting his slate made up.

THE POURPARLERS WITH PARTY LEADERS.

Perhaps, in spite of all his manoeuvering, he will fail to solve the puzzle, in which case he returns to the president and suggests that somebody else be asked to take the task in hand On one occasion there were five abortive attempts to form a ministry before a solution of the problem was found. But when the new prime minister succeeds, he submits to the president the names of his ministerial associates and they are at once summoned to take charge of their respective offices[1] The president has had no share in the choosing of these ministers, at any rate no open share. He has no power to reject any name submitted to him. He must take the new ministry intact. Then the prime minister confronts the Chamber, reads his "ministerial declaration" or outline of policy, asks for its support and usually suggests that it pass a formal resolution of confidence. When this resolution is adopted, the ministry is securely in office until the Chamber of Deputies withdraws its confidence, which it may do at any time. On a few occasions a ministry has been formed with the full expectation that it would command a majority, but on going before the Chamber the new prime minister has found his calculations upset.

THE FINAL SLATE.

It is not necessary in France, as in England, that all members of the ministry shall be members of parliament. Nor, on the other hand, are they forbidden to be members, as in the United States. The constitutional laws are silent on this question of membership. But as a matter of usage the prime minister is always chosen from among the leaders in parliament, and almost invariably he is a member of the lower chamber. With rare exceptions, too, the ministers are selected from among the leaders of party groups in parliament. In the early years of the Third Republic it was thought advisable to select the minister of war from among the high officers

FRENCH MINISTERS DO NOT NEED TO HAVE SEATS IN PARLIAMENT.

[1] The new prime minister is appointed by presidential decree with the countersignature of the retiring prime minister. The other ministers are appointed with the countersignature of the new prime minister.

of the army, and the minister of marine from the list of French admirals; but this practice has not always been followed in recent years.

SIZE OF THE MINISTRY.

The size of the ministry is not fixed by the constitutional laws.[1] The president, with the advice of the prime minister, decides how many members there shall be in each new ministry. The silence of the laws does not imply, however, that the Chamber of Deputies has no control over the size of the ministry; on the contrary it can reduce or increase such membership at any time by virtue of its control over the appropriations for ministerial salaries. When, therefore, the prime minister decides on the size of his ministry, and so advises the president, his action is contingent upon the readiness of the Chamber to vote the sums required.

THE EXISTING PORTFOLIOS.

Before the World War the French ministry contained twelve members; during the war the number was shifted several times. After 1918 it settled down for a time to about fifteen. Then it was increased somewhat. The first Blum ministry (1936–1937) had seventeen portfolios, namely, foreign affairs, finances, interior, justice, national defense and war, air, education, national economy, commerce, agriculture, public works, posts and telegraphs, pensions, mercantile marine, colonies, health, and labor, besides the prime minister and three ministers of state without portfolio—making twenty-one in all.

THE PRIME MINISTER TAKES ONE FOR HIMSELF.

The prime minister usually selects one of the foregoing departments for himself,—the one for which he deems himself best fitted. Occasionally, however, he prefers to serve without portfolio. He never takes the department of justice, for the minister of justice is usually chosen from the Senate and serves as vice president of the council of ministers. Likewise the minister of justice is president of the council of state (the highest administrative court in France) and keeper of the seals, which makes him the lineal successor of the pre-revolutionary chancellor. In that capacity he reads the "ministerial declaration" in the Senate when the prime minister reads it to the Chamber of Deputies.[2] Until a few years ago the prime minister had no regular

[1] In 1920, however, the French parliament passed a statute which forbade any further increase in the size of the ministry without parliamentary consent; but on several occasions since 1920 this law has been evaded.

[2] The ministerial declaration of the Blum government (June 6, 1936) may be found in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part II, pp. 47–50.

secretariat to assist him in his relations with the ministry, but in 1936 a permanent provision for such an institution was made by presidential decree. Its staff consists of a secretary-general and various assistants, some of whom are assigned on detached service from the regular ministerial departments.

In addition to all this the minister of justice performs duties somewhat akin to those of the attorney-general in the United States. He nominates the judges and other judicial officers for appointment by presidential decree. All applications for pardons are dealt with by him, and his recommendations are followed by the president. The minister of foreign affairs conducts the relations of France with other countries; he has supervision of the diplomatic and consular services. The post is of such high importance that the prime minister, in recent years, has frequently taken it for himself, and in any event this portfolio carries a great deal of prestige.

FUNCTIONS OF THE MINISTERS:

1. THE MINISTER OF JUSTICE.

The minister of the interior has functions widely different from those which are performed by the secretary of the interior in the United States. He is the general supervisor of the local government in France. All the prefects report to him; and the work of the local police throughout the Republic is under his direction. He is sometimes referred to as the "minister of public order," which is a more descriptive designation than the one which he officially bears. His office has a great deal of political importance because the prefects are political as well as administrative agents of the ministry and they can exert a considerable amount of influence in the election campaigns.

2. THE MINISTER OF THE INTERIOR.

The minister of finances is a chancellor of the exchequer and secretary of the treasury combined. He prepares the budget and presents it to the Chamber of Deputies. He is responsible for the collection of the national revenues; he has charge of expenditures and loans, and supervises the currency and banking. In addition he is responsible for the management of the government monopolies, particularly the tobacco monopoly.

3. THE MINISTER OF FINANCES.

The minister of public works is in charge of public buildings and national highways. The minister of posts and telegraphs is postmaster-general of France and also manages the telegraph and

telephone services which are owned by the national government.

4 THE MINISTER OF PUBLIC WORKS.

The minister of education exercises a general supervision over the system of public education, including the elementary, secondary, and technical schools. His supervisory jurisdiction includes the University of Paris, as well as the national libraries, museums, and other public institutions of an educational nature.

The minister of colonies nominates the governors and other officials in the French colonial possessions and has the same general functions as those which pertain to the secretary for the colonies in Great Britain. The ministers of national defense and war, air, pensions, commerce, national economy or industry, public health, agriculture, mercantile marine, and labor have self-explanatory functions which need no detailed enumeration. The ministers without portfolio are free for assignment to any special duties which the prime minister desires to have performed They are brought into the ministry to give it increased political strength as a body.

5. THE OTHER MINISTERS.

The conscientious minister, says Poincaré, has his day well filled. In the morning, when he enters his study, he finds a formidable mass of correspondence on his desk. The correspondence which is not addressed to him privately is of course opened and examined by employés, but a large number of letters remain which he is compelled to read through. Most of these come from senators or deputies, who have acquired the annoying habit of recommending people for every kind of official favor. Shortly after nine o'clock the minister gets into his coupé or motor car, the coachman or chauffeur of which wears a tricolor cockade. He is driven to the Elysée if there is a council of ministers, or to the ministry over which the prime minister presides if there is a cabinet council. The council sits till noon or even later.

THE WORKING DAY OF A MINISTER.

THE MORNING.

On days when it does not sit the minister receives officials or members of parliament. There is an interminable procession of people soliciting favors. After lunch he goes to the Chamber or the Senate When he returns he finds all the desks and tables in his office loaded with great portfolios, crammed with every kind of document. These are orders or decrees prepared by the different branches of his department, awaiting the ministerial signature. If he does not choose to sign them

THE AFTERNOON.

blindly, he must spend long hours in delving through these huge piles of papers. He then receives his chief subordinates, who come to discuss matters of current business. To acquit himself decently of a task so heavy and so varied, it is not enough to possess sagacity. Unless the minister is gifted with a great aptitude for work and a rare promptness of judgment he will be merely the tool of his underlings who get things ready for him.[1]

A MINISTER'S DUAL POSITION

In France, as in England, each minister occupies a dual position. He belongs to a council of ministers which deliberates on matters of general policy and endeavors to guide by its decisions the work of parliament. As such he attends all meetings of the ministry and takes part in its discussions. He also attends the sessions of the chamber in which he is a member, and goes to the other chamber when matters affecting his own department are under discussion. The constitutional laws provide that the ministers have ex officio the right to attend sessions of both chambers and to be heard in either when they request a hearing. Thus a minister who is a senator may speak also in the Chamber of Deputies; while a minister who is a deputy must be heard by the Senate when he so desires. And a minister who has no seat in either chamber may nevertheless attend and speak in both. This is an interesting and significant feature of French government.

THE UNDERSECRETARIES.

The ministers do, in fact, attend the parliamentary sessions regularly, especially in the chambers to which they individually belong. They spend a good deal of time either at the Luxembourg or at the Palais Bourbon when parliament is sitting. This means that it is impossible for them to give such personal attention to their several departments as members of the American cabinet are expected to do. Consequently there has developed during recent years the practice of providing certain ministers with undersecretaries who virtually take full charge of some branch of departmental work. The duties of each undersecretary are prescribed by a presidential decree.

THEIR STATUS.

Although these undersecretaries are not members of the ministry, they are more or less regularly summoned to cabinet meetings in order that they may give their advice on matters concerning which they have special knowledge. Therein they differ from the undersecretaries in

[1] Raymond Poincaré, *How France Is Governed* (New York, 1913), pp. 198–199.

Great Britain and in the United States who do not regularly attend the meetings of the cabinet.[1] In France, the undersecretaries are usually, but not always, members of parliament; but in any case they have the right to be heard in either chamber. They reply to any interpellations that may relate to their own work, and if the reply is not satisfactory they can be forced out of office by an adverse vote of the chamber.

THEIR RESPONSIBILITY.

In this sense the undersecretaries are directly responsible to parliament, yet they are not permitted to countersign decrees of the president or to issue ministerial decrees over their own signatures. When a ministry goes out of office the undersecretaries go too, but all other administrative officials remain. This permanence of tenure among the administrative staff, in all its subordinate ranks, is of great consequence to the orderly conduct of business in France where ministries have changed so frequently that the whole fabric of administration would long since have broken down were it not for this official stability on the part of those who do the routine work.

MEETINGS OF THE COUNCIL OF MINISTERS.

The ministry holds two formal meetings a week, usually at nine in the morning. At these meetings, which are known as sessions of the *council of ministers* and are held at the Elysée, the President of the Republic sometimes presides but has no vote. But there are also weekly sessions of the *cabinet council* which the President of the Republic does not attend At such meetings the prime minister (or, in his absence, the minister of justice) takes the chair. The real business is done in these cabinet consultations; the policy of the ministry is there determined upon, and matters are put in form for final ratification at the more formal sessions. In neither case, however, are any official records kept; the proceedings are strictly secret as in England and in the United States. After each session of the council of ministers, however, the newspapers are given a brief summary in which, as one premier has said, "all mention of important questions is usually omitted."

The French prime minister is not the head of his ministry in the English sense. In constructing his ministry he is often under the necessity of coaxing the members in, and having done this he is

[1] At Washington, when a member of the cabinet is out of town, however, the undersecretary or the senior assistant secretary in his department is usually invited to be present at meetings of the cabinet.

in no position to treat them as subordinates. Individual members of his ministry are well aware of the fact that at a critical juncture they can oust their premier from office by merely tendering their resignations and rallying their copartisans to vote against him in parliament. This does not mean that they lose their posts, for they have a good chance to become members of a new ministry, with some other prime minister at its head. This is because a "new ministry" in France is rarely a new one in the English or American sense. Usually it is a mere reshuffling of an old one.

POSITION OF FRENCH AND ENGLISH PRIME MINISTERS COMPARED.

MINISTERIAL RESPONSIBILITY

In France, according to the literal terms of the constitution, the ministers are jointly and individually responsible. But responsible to whom? To both chambers, and not, as is the English usage, to the lower house alone. In practice, moreover, the French ministers do hold themselves responsible to both chambers inasmuch as they reply to interpellations in both. But whether they are under obligation to resign whenever the Senate votes its lack of confidence—the answer to that question is not so clear. On more than one occasion the Senate has voted against a ministry without forcing it to resign. On the other hand several ministries have been turned out of office by adverse votes of the Senate—the latest instance being that of the Blum ministry in 1937 which went out of office because the Senate would not support the prime minister's demand for a broad grant of financial authority.

WHAT IS MEANT BY MINISTERIAL RESPONSIBILITY IN FRANCE?

1. THE LEGAL PROVISION.

Of course it is quite obvious that strict adhesion to the letter of the constitution would be impossible. A ministry cannot be equally responsible to two masters who often fail to agree. The Senate and the Chamber of Deputies, being elected at different times and in different ways, are not always of the same mind. The Senate, in general, is the more conservative of the two chambers, which is what it was intended to be. No ministry, howsoever resourceful, can hope to retain the confidence of a conservative Senate and a radical Chamber at the same time. Usage, however, has stepped in to solve the dilemma, for while the Senate has never conceded the right of the lower chamber to decide whether a ministry shall stay in office, it has tacitly permitted that

2. THE USAGE.

principle to become operative under ordinary conditions. So, despite the wording of the constitutional laws, it is in the Chamber of Deputies and not in the Senate that the fate of a ministry is usually settled. One can say, therefore, that ministerial responsibility in France means responsibility to the lower house, much as it does in England. There is a degree of responsibility to the Senate, but it may fairly be called exceptional.[1]

RECONSTRUCTED MINISTRIES ARE MORE COMMON THAN NEW MINISTRIES.

In France, as in England, all the ministers (including the under-secretaries) go out of office together when the ministry encounters a reverse in parliament. But this does not mean that they stay out. On the contrary what usually happens is nothing more than a shakeup in which some weak ministers are dropped and some stronger ones taken on. But the terms weak and strong, when used in this connection, have nothing to do with the personal capacity of ministers. They are adjectives of politics and refer to a minister's political following only. There have been relatively few ministries during the past sixty years which did not contain some members drawn from among the ministry which had just been overthrown. Even the outgoing prime minister has sometimes been given a portfolio in the new ministry, and occasionally has resumed his place at the head of it. Thus it is that the Chamber of Deputies may vote to overturn a ministry one day and within forty-eight hours give its confidence to a new ministry composed of almost the same individuals, perhaps with the same prime minister at their head. That, of course, could hardly happen in England.

THIS EXPLAINS THE STATEMENT AS TO "FREQUENT CHANGES IN MINISTRY."

All this ought to be borne in mind when one reads in English books the statement that "France has had ninety-one cabinets in sixty-seven years," or that the French "change their ministers as often as their shirts."[2] Taken literally, such aspersions are unfair. It does not mean that governmental policy has been shifted, on the average, every nine months or so. The ship of state keeps right on its course. There is no discernible change in general policy unless the new *combinaison ministérielle* proves to be altogether different from the preceding one, which is rarely except

[1] Of the 91 ministries that have been in office since 1871 only four or five have been ousted by adverse votes in the Senate

[2] England, during this same period, has had only 18 cabinets and only 12 prime ministers.

after a general election such as that which elevated the Popular Front ministry of Léon Blum to office in 1936.[1]

In England, a cabinet which goes into office with a majority behind it is rarely turned out until the next election. In France the contrary is true. There it is the Chamber of Deputies, not the electorate, that ordinarily forces a ministry out of office. On very few occasions has a French ministry been repudiated by the people at the polls. Defeat, for the most part, has come at the hands of parliament. Or, to put it another way: in England the cabinet must keep its hand on the pulse of the country, in France upon that of the Chamber. The task of the English ministry is much the easier, for while public opinion in a democracy may be uncertain, coy, and hard to please, it is much less so than is the membership of a loosely jointed bloc in the legislature[2]

A CONTRAST WITH CONDITIONS IN ENGLAND.

There is another difference between the ministers in France and in England. In both countries they perform executive and parliamentary functions, and supposedly give equal attention to each of these phases of their work. But as a matter of fact the executive duties of the English minister are on the whole deemed to be the more important, whereas in France his parliamentary functions appear to have the first call on his time and interest. A British minister who shows good administrative judgment and capacity is ordinarily safe in office so long as the cabinet stands; but in France a minister's security of tenure depends very largely upon his own individual adroitness as a parliamentarian and a politician. An indiscreet statement, a slight mishap in his department, a minor action which happens to arouse the wrath of some influential newspaper—and his post may be in danger.

ANOTHER POINT OF DIFFERENCE.

THE FRENCH ADMINISTRATIVE SERVICE

The routine work of French administration is carried on not only by undersecretaries but by subordinate officials in the various ministries. Most of these hold their positions under a permanent tenure; they do not go out of office when a ministry resigns. Together they constitute a vast administrative machine, a great bureaucracy which goes right on

THE FRENCH BUREAUCRACY.

[1] See *below*, Chapter XXVIII.

[2] Several excerpts from discussions relating to the French ministerial system are printed in Norman L. Hill and Harold W. Stoke, *Background of European Governments* (New York, 1935), pp. 266–289.

with its work, unmindful of changes at the top. Ministers come and go, but neither their entry nor their exit makes much difference in the routine work of the departments. Even dynasties may change, but the bureaucracy neither dies nor surrenders. Paul Deschanel once growled that "France is not a democracy but a bureaucracy." He was right in the sense that it is the corps of *fonctionnaires* who do the real work of governing. The ministers assume the responsibility, and ostensibly they determine the administrative policy; but if a French minister should attempt, during his all-too-brief term of office, to recast the traditional way of doing things in his department he would find himself tackling an impossible job. The minister who heads a bureaucracy is by no means its master. On more than one occasion a French minister has discovered that fact to his own embarrassment.

THE INTERNAL ORGANIZATION OF A MINISTER'S DEPARTMENT:

1. THE "CHEF DU CABINET" AND HIS ASSOCIATES.

The French administrative system is well organized. Its keynote is concentration. Functions are devolved by the ministers upon directors of services, chiefs of bureaus, chiefs of sections, and so on, all forming a hierarchy of definite ranks and gradations. In each of the ministerial departments there is much the same division and subdivision of work. First of all, the minister has a group of confidential advisers who form his own "little cabinet." The most important of this group, the minister's right-hand man, is known as the *chef du cabinet*. In addition there is a deputy-chief, a secretary, and various attachés. The relation between the minister and his little cabinet is both political and personal; its members hold no other positions; they come into office with the minister and go out with him. No, to be more accurate, they do not always go out with him, for he frequently manages to squeeze them into permanent civil service positions just before he goes.

2. THE "DIRECTEURS" AND THE LOWER RANKS.

The routine administrative functions of each ministry are divided into services (*directions*, they are called), and each service has its director as well as its assistant director. These *directeurs* are officials who have been recruited by promotion from lower positions. They correspond, in a way, to the assistant secretaries at Washington except that they do not resign when a new administration comes in.[1]

[1] But the undersecretaries (see *above*, p 445) are not assistant ministers. They do not form a regular rank in the administrative hierarchy. They are

Each *direction* is again divided into several bureaus, and each bureau has its *chef du bureau* who is also a permanent official. These bureaus are the master cogs in the administrative machine. Without them the whole mechanism would cease to run. They are manned by a large corps of functionaries, *redacteurs* (clerks) and other subordinate officials who are minutely classified by ranks and grades. Most of them are appointed to the lower grades in accordance with established civil service regulations and are then promoted on a basis of experience and merit.

THE BUREAUS.

Within the bureaus there are further divisions and subdivisions; but we need not follow the classification any farther. It is enough to say that the whole organization takes the form of a pyramid, with the minister at the peak. All authority converges inward and upward. In France as a whole this bureaucracy makes up an army about 600,000 strong. This may seem to be a surprisingly large number in view of the fact that Great Britain has only about 500,000; but the French total includes a wider range than the British, for example, it includes all the school teachers. France also has nearly 400,000 officials engaged in local government, which means that the public payroll supports approximately a million persons, not including the military and naval personnel or the employees of the government-owned railways.[1]

THE MERIT SYSTEM OF APPOINTING OFFICIALS.

France has no general civil service law as in the United States. Several attempts to enact a comprehensive *statut des fonctionnaires* have ended in partial or complete failure. But a merit system of appointments has been developed by numerous "ordinances of public administration," which have been issued by the ministry with the approval of the council of state. Appointments to the lower positions are based upon competitive examinations (*concours*) and nearly all the higher posts, with the exception of the very highest, are filled by promotion. These promotions are made by each minister, within his own field, from an annual promotion list which is prepared by a committee of his subordinates. Seniority plays the largest part, but merit may also be taken into account, and sometimes (although not usually) political influence and personal favoritism also have

really ministers of the second grade, in charge of special services within the department.

[1] Estimates made some years ago may be found in W. R. Sharp, *The French Civil Service* (New York, 1931), pp. 13–21. This volume gives an excellent, detailed account of the whole subject.

a share. Officials of all grades are also protected in France against wrongful suspension or dismissal. They are ordinarily entitled to a trial before a "commission of discipline" on which there are fellow-officials of the same rank.[1]

Each minister lays down the rules according to which the competitive examinations are to be held for posts within his department, although there are a few general requirements for all examinations. The baccalaureate degree, for example, is required in the case of all except the very lowest positions. Examining boards, usually composed of both public officials and college teachers, are appointed to conduct the tests, which represent a high standard—probably higher than in any other country. Criticism is sometimes made that the examinations are too academic in character and it is also contended that, in some way or other, ministers manage to get too many of their own friends or relatives into the service.

NEPOTISM IN THE SERVICE.

At any rate nepotism is not uncommon in the public service of the Republic. Public opinion seems to resent it less strongly than in England or in America. On the whole, however, the French administrative service, in its various ranks and grades, has attained a high standard. Capable young men are drawn into it in large numbers despite the low salaries paid, and most of them seem to find it an agreeable career. The social prestige which goes with an official position in France and the permanence of tenure count for much, especially with young Frenchmen who have some private income with which to supplement their salaries. The liberal pension arrangements also serve to attract bright young men who prefer security to economic adventure.

A WORD TO THE CRITICS OF THE FRENCH GOVERNMENTAL SYSTEM.

There are those who find satisfaction in telling the world that parliamentary government has failed in France, that ministerial responsibility has become ministerial anarchy, and that the instability of her cabinets has made France a will-o'-the-wisp among the nations. All this has been so often repeated that a considerable part of the world believes it to be true. But the true test of

[1] Most of the government employees are organized, chiefly in associations of a syndicalist character which claim the right to strike, if need be, as a means of enforcing their demands. Formal proposals to prohibit strikes by public employees have never materialized into law, and "protest" strikes of short duration have sometimes occurred. For a full discussion see the chapter on "Public Personnel Management in France" by Walter R. Sharp, in *Civil Service Abroad*, by Leonard D. White and others (New York, 1935), pp 145–153.

a government is the way in which it satisfies the people who live under it. It was Aristotle, if my memory serves me right, who first remarked that the only properly qualified judges of a repast were the partakers thereof. This dictum has been reiterated a great many times and in a great many versions since Aristotle's day, but there are still those who seem to think that the job is one for expert dietitians at a distance. It is quite true that France does things differently from England and America; but it does not follow that she does them worse.

HOW THE FRENCH PEOPLE FEEL ABOUT IT.

There is no general feeling among the French people that their system of parliamentary government has been a complete failure. Critics of their own governmental system there are in France, as in the few remaining countries where criticism is now tolerated; but they are not more numerous or more vociferous than are the critics of the American scheme of government in America. Law and order are better maintained in France than in the United States; justice is more fairly and more promptly administered; the work of administration is carried on more economically; there are no such things as a spoils system, gerrymandering, pork barrel, machine-gun banditry, third degree, grandfather clause, or lynching bees. There are no hung juries and jury-fixers, ambulance chasers, ward bosses, racketeers, vigilantes, kidnappers, beefsquads, bagmen, hijackers, mattress voters, or men who "take the rap." The French have at least enough political capacity to spare themselves these adornments of American life.

THE NATIONAL ECONOMIC COUNCIL

A NATIONAL PLANNING BOARD.

In order to assist the ministry in planning economic legislation and to help parliament in its consideration of such measures a national economic council was established by decree in 1925. Eleven years later it was enlarged and given a permanent statutory basis [1] The general assembly of this council now consists of well over a hundred members representing chambers of agriculture, chambers of commerce, employers' associations, labor unions, "intellectual workers," consumers' organizations, and so on, together with a small group of "economic

[1] An English translation of the law (March 21, 1936) is printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part II, pp. 74–78.

experts." The prime minister is ex officio president of the council but he may designate another minister or an undersecretary to serve in his stead. The statutory functions of this body are to make careful studies of national economic problems, and to advise the government thereon. All measures of an economic character, when introduced into parliament, are at once submitted by the ministry to the national economic council. All ordinances of public administration, if they have economic implications, must be similarly submitted. In addition the ministry may submit any economic question to it for study, and the same may be done by any parliamentary committee. Or the council may take up any economic problem and submit recommendations on its own initiative. The council's recommendations are made to the prime minister, but its reports must be laid before parliament.

ITS PROCEDURE.

Most of the council's investigatory work is performed through twenty professional sections. Each section is composed of an equal number of employers and of manual and intellectual workers. This requirement of equality does not apply to the agricultural section. Members of the various sections are appointed by executive decree after consultation with the national economic council, and the size of each section depends upon the importance of each profession or occupation in the national economy. But no professional section may have more than two hundred members. The national economic council maintains a permanent commission of its own members with the function of receiving requests and distributing them among the various professional sections. This commission has a regular secretariat, headed by a secretary-general. When a section makes a report it goes first to the council's permanent commission which then refers the report, if it thinks desirable, to the general assembly for discussion. Or it may be directly referred either to the governmental authorities or to organizations representing the economic interest concerned. The permanent commission works in harmony with the ministry of national economy, provision for which was first made in the Léon Blum cabinet (1936).

ITS WORK.

Since its original establishment in 1926 the national economic council has sponsored a large number of comprehensive investigations in such fields as unemployment, housing, industrial organization, labor relations, overseas trade, and so on. These studies in several instances became the basis for

subsequent legislation, especially in the case of measures passed by the French parliament during the past few years. In the earlier years of its existence the council was regarded by the Chamber of Deputies with suspicion and jealousy but this feeling has gradually disappeared. Today the national economic council and its professional sections are generally regarded as valuable aids in the formulation of national policy in economic matters. It should be made clear, however, that the council's functions are altogether investigatory and advisory. It has no power to make or enforce laws or regulations. On the other hand it provides the regular political authorities with vocational representative bodies whose research work and counsel can be of considerable value.

THE COUNCIL OF STATE

THE COUNCIL OF STATE.

The ministry (or council of ministers) should be distinguished from the council of state. This latter body dates from the morrow of the Revolution and in its earlier days possessed large powers. Today its functions are only in small part legislative. All ordinances of public administration, as has been said, are submitted to the council of state before they are issued, this being done in order to make sure that the ordinances do not reach beyond the scope of the laws. Sometimes the council virtually redrafts the ordinance, leaving the president little to do but to sign it. On the other hand the action of the council in such matters is never mandatory; the ministers must submit all ordinances to the council but they are not bound to do what it advises.

ITS JURISDICTION.

The chief jurisdiction of the *Conseil d'État*, apart from advising on ordinances of public administration, is now concerned with administrative law, of which more will be said later on.[1] It is here that it renders its most notable service, protecting the citizen against arbitrary action on the part of the public authorities. The council is made up of thirty-nine "councillors in ordinary service" or regular members, who are appointed by the President of the Republic under certain statutory rules.[2] These councillors, by majority vote, render the council's

[1] *Below*, Chapter XXX.

[2] One of these rules is that at least half the councillors in active service must be persons who have served in designated administrative offices and have qualified themselves for higher appointment by competitive examination.

decisions. In addition there are twenty-one "councillors in special service" who represent the various administrative departments and serve in an advisory capacity.

A BODY OF HIGH QUALITY AND GREAT IMPORTANCE.

The council of state is in many ways a remarkable body. It combines advisory functions in the making of ordinances with final authority in the adjudication of administrative controversies. It is the supreme administrative court of the Republic. In addition it is a body of legal advisers and technical experts to which the government may turn at any time for counsel in the solution of its problems, a sort of collective attorney-general. It personifies wisdom, experience, and impartiality in the science of administration. Thus it serves as an antidote for the poisons of democracy. The French people have a high respect for their council of state, and rightly so, for in personnel it maintains a standard which few public bodies in any country are able to approach and by its work it forms a great stabilizing factor in the government of France.

Léon Dupriez, *Les ministres dans les principaux pays d'Europe et d'Amérique* (2 vols., Paris, 1892–1894) is still a work of considerable value on the development and nature of ministerial responsibility, although it is badly out of date on some points. There are admirable chapters on the French ministerial system in Adhémar Esmein, *Droit constitutionnel française* (8th edition, 2 vols., Paris, 1927), Vol. II, pp. 208–273, Gaston Jèze, *Principes généraux du droit administratif* (3 vols., Paris, 1925–1930), the same author's *Cours de droit public* (Paris, 1929), and Maurice Hauriou, *Précis de droit constitutionnel* (2nd edition, Paris, 1929). The long chapter on "The Executive Power" in Robert Valeur's study of France (see *above*, p. 416) contains many interesting comments. Valuable data is given in J. Echeman, *Les ministères en France de 1914 à 1932* (Paris, 1932).

Mention should also be made of Duguit's volumes (*above*, p. 437), R. Bonnard's *Précis élémentaire de droit public* (Paris, 1936), H. Nöel, *L'administration de la France* (Paris, 1911), Paul Duez, *La responsabilité de la puissance publique* (Paris, 1927), Joseph Barthélemy, *Le rôle du pouvoir executif dans les républics modernes* (Paris, 1910), and Léon Blum, *La réforme gouvernementale* (Paris, 1936).

The best book in its own field is Walter R. Sharp, *The French Civil Service* (New York, 1931), which explains in full detail the organization of the French bureaucracy. A more general survey may be found in the chapter on "The French Civil Service" by Aubert Lefas which is included in Leonard D. White, editor, *The Civil Service in the Modern State* (Chicago,

1930), pp. 213–279, and in the volume by the same author (with others) entitled *Civil Service Abroad: Great Britain, Canada, France and Germany* (New York, 1935).

On the system of national economic councils mention should be made of W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part II, pp. 74–78, L. L. Lorwin, *Advisory Economic Councils* (Washington, 1931), and E. Linder, *Review of the Economic Councils in the Different Countries of the World* (Geneva, 1932).

A volume on *Le conseil d'état* by R. Brugère (Paris, 1910) explains the organization and powers of that body.

CHAPTER XXV

THE SENATE

The Senate, according to the constitution is designed to be a deliberating, moderating, stabilizing influence. Its function is to impose at least a temporary check upon the exuberance of the deputies who are younger, more numerous, and reflect a more direct expression of universal suffrage.—*Joseph Barthélemy*

For more than two centuries preceding the eve of the Great Revolution there was no parliament in France. The king was the source of the laws. But the revolutionary assembly changed this situation in 1789 by proclaiming that all legislative power resided in itself. And during the next three-quarters of a century France had a series of new constitutions, some of which provided for a single chamber and some for a legislature of two branches. There was no fixed tradition, but in general the monarchists preferred the bicameral system while the republicans felt that one chamber was enough Hence the Third Republic began its career in 1871 with a single chamber,—a national assembly it was called.

THE EXISTING SENATE IS THE OUTCOME OF A CONSERVATIVE VICTORY.

This national assembly, it will be remembered, was not merely a legislative body; its task was to govern the country and it assumed the responsibility of providing a constitution at the same time. But it found the work of government much easier than that of making a constitution. More particularly it split on the question whether the new constitution should provide for one legislative chamber or for two. Without settling this question the assembly could not make headway in its task and for a long time the membership wrangled over it. The republicans wanted a single chamber, while the anti-republicans insisted upon having both a Senate and a Chamber of Deputies. In the end the anti-republicans had their way. Their victory is embodied in the first of the three fundamental laws, a law which outlines the organization of the Senate. "The constitution of France," as one writer has said, "is first of all a Senate,"—which is both chronologically and literally true.

The establishment of an upper chamber was a necessary concession to the monarchists, imperialists, and other conservatives who formed an influential bloc in the national assembly. They feared that a single elective house might too easily be stampeded by gusts of radicalism. They were influenced by exactly the same motives which swayed the framers of the American Constitution in 1787. It is significant that conservatives in all ages and in all countries have been partial to second chambers. But the makers of the French constitution were also influenced by the fact that the bicameral system had been adopted by every other country. The example of the United States was repeatedly alluded to, and it carried considerable weight because the American Senate at this time was proving itself to be an effective agency for restraining not only the lower house but the President as well. It had given considerable pleasure to French public opinion by refusing to ratify a treaty for the annexation of Santo Domingo which President Grant submitted to it in 1870.

THE ACTUATING MOTIVES OF THE CONSERVATIVES.

But having agreed upon the principle of a bicameral parliament there was still the problem of determining how the members of the upper chamber should be chosen, and this problem gave the national assembly a great deal of trouble. It was taken for granted, of course, that the Chamber of Deputies would be constituted on a basis of manhood suffrage. It was also assumed that the Senate would have to be constituted on a different basis, otherwise it would not serve the purpose which the conservatives had in mind.

THE PROBLEM OF ORGANIZING THE SENATE.

How to devise a Senate that would function as a restraint on the Chamber of Deputies and yet not be too much of a restraint—that was the problem. France had a nobility in 1875, but it was a motley affair, composed of frayed-out families whose lineage went back to the time of the Bourbons, and of sycophants who owed their titles to the favoritism of the Bonapartes. It was without prestige among the people. And in any event a House of Peers did not seem to comport with the forms or spirit of republicanism. On the other hand, the American plan of having senators chosen by the states could not be adopted because there were no constituent states in France. Some new method of organizing the second chamber had to be found. The conservatives desired a Senate appointed for life. The radicals did not want a

THE CONFLICTING VIEW.

Senate at all, but insisted that if France must have such an institution the senators ought to be elected by the people.

In the end it was decided that the Senate should be composed of 75 members appointed by the national assembly for life and 225 members chosen for nine-year terms by electoral colleges in the several departments or administrative divisions of the Republic. The life membership provision was designed to supply the Senate with a strong conservative infusion, for these life members were to be named by the national assembly which the conservatives controlled. It was their intention to throw a solid block of 75 monarchists into the Senate at the outset and thus to make sure that it would stay friendly for many years.

THE FINAL SOLUTION.

But the plan did not work out as expected. By reason of jealousy and dissensions among the monarchists it proved possible for the republicans to elect more than half the original 75 life members from their own ranks. Public opinion throughout France, moreover, soon came to regard appointive life-tenure as an anachronism, and within ten years this feature of the constitution was repealed (1884). Those senators who had been appointed for life were allowed to serve out their days, but as they died or resigned their places were filled by the elective process. The last of the life senators passed off the stage several years ago.

HOW IT WORKED.

PRESENT COMPOSITION OF THE SENATE

Today, therefore, the French Senate is composed entirely of elective members, numbering 314 in all.[1] The senators, who serve for nine years, are chosen to represent the eighty-nine departments of France, the three departments of Algeria, and the various French colonies. Each department has from one to five senators; the colonies have four senators among them.[2] Senators from one third of the departments retire triennially. The selection is made by an electoral college which is convoked in the department for this purpose. This body is made up of four elements (a) the members of the Chamber of Deputies who represent the department, (b) the members of the general council of the department, (c) the members of the various arrondissement councils within the department, and (d) delegates

PRESENT COMPOSITION OF THE SENATE.

[1] Alsace-Lorraine was assigned the additional fourteen senators, for its three departments, on the restoration of that territory to France in 1919

[2] For the details of colonial representation, see *below*, Chapter XXXII.

chosen by the municipal councils of all the communes (cities, towns, and villages) within the department.[1] As there are more than 36,000 communes in France the communal delegates far outnumber all the other members of the electoral colleges and can usually control the election of senators. It is for this reason that the Senate is often called "the great council of the communes."

The original provision was that each commune, no matter what its size, should have one delegate. But in 1884 it was provided that the communes should send from one to thirty-four delegates according to the size of their municipal councils. The delegates are in each case chosen by the council. When there is one delegate only, the mayor of the commune is practically always named; when there are several delegates the mayor and various councillors are selected by their fellow members. But the various communes are by no means represented in strict proportion to the number of their inhabitants. In the electoral college of the department of Bouches-du-Rhône, for example, the great city of Marseilles with half a million inhabitants is represented by twenty-four delegates, while various neighboring villages, with a total population of less than 30,000 are represented by an equal number of electors. This is because no city with the exception of Paris is permitted to have more than twenty-four representatives in an electoral college while every village, however small, is entitled to at least one delegate.

INEQUALITY OF REPRESENTATION.

When the time for choosing senators arrives, an electoral college is summoned to meet at the chief town of the department. Any French citizen, forty years of age, is eligible to be elected a senator, provided he is not a member of any royal or imperial family that has ever ruled in France. There are no formal nominations; each member writes his own ballot. The contest is conducted on straight party lines—as straight as party lines in France ever are. On the first ballot a clear majority of all the delegates is necessary to elect, and the same is true of the second ballot. But if the department's full quota of senators is not elected on the first two ballots, a third ballot is taken, and on this third ballot a plurality is sufficient. The electoral colleges are sometimes very large bodies, with a membership running into many hundreds. Delegates are often

THE PROCEDURE IN FRENCH SENATORIAL ELECTIONS.

[1] For an explanation of these general councils, arrondissement councils, and municipal councils see *below*, Chapter XXXI.

pledged in advance; the candidates make speeches (with plenty of promises), and the whole procedure takes on the color of an American nominating convention.

CHARACTER OF THE SENATORIAL CANDIDATES.

It is unusual for anyone to be a candidate for the Senate until after he has made himself well known throughout the department by holding other offices. Most of the candidates are lawyers, journalists, rural landowners, or professional politicians, who have served in the Chamber of Deputies. They esteem it a promotion to go to the Senate although the latter is the less important of the two chambers in point of power. They are attracted by the greater prestige and by the longer term which election to the Senate assures. At any rate there is a periodical migration of deputies to the upper house, much to the advantage of the latter. The hegira endows the Senate with a nucleus of seasoned veterans. They are usually well along in years when they get there (the average is well above sixty). Consequently a nine-year term in the Senate often marks the closing of a political career. On the other hand senators have sometimes become prime ministers and in a few cases have been elected to the presidency of the Republic.

GENERAL CHARACTER OF THE SENATE.

The Senate has not been so conservative a chamber as it was originally intended to be, but it has justified the expectation that it would be composed of more mature, more experienced, and more distinguished statesmen than the Chamber of Deputies. For the most part it has served as the reliance of those who want political, economic, and social changes to come slowly and in an orderly way. Age and experience usually lend sobriety to opinion. Most French senators are men who are nearing the age of three-score-and-ten. Legislators at that age are not customarily under the illusion that mankind can be regenerated by enacting a few more laws. The very fact that the senators are "elder statesmen" tends to make them conservative, no matter what their party affiliations may be.[1]

ITS PERSONNEL.

In the general quality of its membership the French Senate has set a good standard. Lord Bryce, writing in 1921, declared that no other legislative body has in modern times maintained a higher standard of ability and integrity. The Senate is not especially popular in France, but

[1] There is a good discussion of the French senatorial temperament in W. L. Middleton, *The French Political System* (New York, 1933), pp. 170–181.

it commands respect and has firmly entrenched itself in the parliamentary system there. Its lack of positive popularity arises in part from the fact that its power, as a legislative body, is not dynamic. Its function is to serve as a brake on the machine, not as an accelerator Legislative chambers with that function do not usually stir the public imagination.

Despite the high quality of its membership and the measure of respect which it has gained among the people, the Senate is often subjected to sharp criticism. Among other things its critics complain that the system of indirect election is clumsy and results in the gross over-representation of small towns and of rural districts. One hears exactly the same complaint regarding "government by yokels" that is so frequently made against the state senates in eastern portions of the United States. Many Frenchmen believe, moreover, that the nine-year term is too long, especially since the senators are chosen by delegates who may themselves be three or four years away from the people. It is possible for a senator, in the closing year of his term, to be twelve years distant from the action of the voters. In its mental attitude, therefore, the French Senate may be a decade behind the times.

ITS CRITICS.

Complaint is also made that the Senate is so wedded to the tradition of seniority that new members, however competent, can exert very little influence upon its deliberations. In his first year, as one rather facetious observer has remarked, the newly elected senator does not venture into the Senate chamber at all but remains in the lobby. In his second year he slips into a back seat. In his third year he votes; in his fourth he asks for a place on some small committee, and in his fifth year he gets it. In his sixth year he makes a report on some minor question, in his seventh comes his first speech, in his eighth he speaks twice, and in his ninth year he is defeated for reëlection. An exaggeration, of course, but with a modicum of basis for it.

Many projects for reorganizing and liberalizing the French Senate have been put forward during the past forty years, but no tangible results have come from any of them. The Senate, of course, does not want to be reformed, and there is no way of reforming it against its own will. No change can be made in the organic law of 1884 without its concurrence, and French senators are like all other legislators in their disinclination to be thrown out of office. Moreover, it is much easier

PROPOSALS FOR ITS REFORM.

to pick flaws in the present organization of the Senate than to agree upon a substitute. If the reformers could unite on a definite plan of reorganization there would be some hope of its ultimate adoption despite the Senate's opposition, for a second chamber will always bend to the will of the nation when that will is clearly made manifest. Both the House of Lords and the Senate of the United States have done this during the past thirty years. But in France the proponents of senatorial reform have not been able to get together upon any plan. There are almost as many plans of reform as there are reformers. So the Senate, amid the babel of jarring voices, goes placidly on. Whenever it rejects some legislative innovation there is an outburst of popular protest, which generally subsides after a while. Then a fresh outburst comes and takes the same course. The Senate has been wise enough to keep within the line where its own existence might become a real issue.

THE SENATE'S MEETING PLACE.

Both the Senate and the Chamber of Deputies ordinarily meet at the same time, and their sessions come to an end simultaneously. The deputies are never called into session alone; but the Senate may be summoned in special session for the purpose of hearing an impeachment. In Great Britain and the United States the two legislative chambers meet under the same roof; but this is not the practice in France. The French Senate holds its sessions in the Luxembourg Palace, a structure which is redolent of historic memories[1] It has many magnificent rooms and corridors, richly decorated with tapestries and with carvings in wood. The Senate chamber is in the form of an amphitheatre, with eight rows of arm chairs, upholstered in red velvet, rising tier on tier. Directly in front of them is the tribune from which the senators (or the ministers when they are present) make their speeches. Behind the tribune sits the president of the Senate, with various officials on either hand, while grouped around them are splendid marble statues of the great chancellors who laid down the law in olden days,—Turgot, D'Aguesseau, Colbert, and the rest. On the lawmakers of a modern republic these faces of stone look down.

[1] This mansion, which is situated in the Rue de Baugirard, at the end of the Rue de Tournon, was built during the early years of the seventeenth century for Marie de Medicis, and was considerably remodelled by Napoleon I. During the period of the Red Terror it was used as a prison It served as a legislative chamber during the First and Second Empires. The Senate of the Third Republic has used it since 1879.

The Senate elects its own president, and this official ranks next to the President of the Republic among the officials of state. He has the usual powers of a presiding officer, including disciplinary powers; but these he has no occasion to use, for the Senate is an exceedingly well-behaved body. Its decorum is almost oppressive. To pass from the Palais Bourbon, where the deputies foregather, to the mansion of Marie de Médicis is to breathe a different atmosphere. Instead of a gavel the president of the Senate uses a bell which tinkles melodiously at each stage in the advance of business. The Senate also elects, from among its own members, a vice president and a committee of management which performs various functions especially in arranging the order of business. The debates are stilted and usually tiresome; they lack the excitement which accompanies the resounding oratorical jousts in the lower house. The Paris newspapers pay relatively little attention to them. Nevertheless most of the speeches in the Senate are well prepared and carefully thought out. They read well in print and many of them have permanent value. Senators of France are paid for their services and have the usual immunities of legislators,—freedom from arrest and freedom of speech—subject to the customary limitations

ITS PRESIDING OFFICER.

THE SENATE'S POWERS

It was the intention of those who framed the French constitutional laws that the Senate should be at least co-equal with the Chamber of Deputies in authority and influence. The conservatives in the national assembly cherished the hope, in fact, that the Senate would be the more powerful of the two chambers. So far as the express provisions of the constitution go, there is no reason why it should not be, for the constitution makes the ministers responsible to both chambers. It allots to the Senate an equal share in the making of all laws, with the single exception of money bills which must originate in the lower house. And it gives the Senate two special powers which in 1875 were deemed to be of great importance, namely, the right to serve as a high court of impeachment, and the power to join with the President of the Republic in ordering a dissolution of the Chamber of Deputies.

GENERAL POWERS OF THE SENATE: (a) AS ORIGINALLY INTENDED.

But the expectations of those who planned the powers of the French Senate have not been fulfilled. It has become distinctly

the less influential of the two chambers. This is partly because all previous upper chambers in France had occupied a subordinate position, and a tradition of inferiority had thus become established. It is also because the Chamber of Deputies, with its members chosen for short terms by direct manhood suffrage, has assumed itself to be more truly representative of the people and has arrogated powers on that assumption. It has taken virtual control of the ministry and control of the budget, although the constitution does not give it control of either. The Chamber of Deputies has quietly gathered this authority under its wing, just as the Senate of the United States has usurped a virtual right to initiate money bills by the expedient of mass amendments. All of which supplies another illustration of the axiom that the wording of a constitution does not always afford a dependable clue to the facts of government.

(b) AS THEY HAVE ACTUALLY WORKED OUT.

What are the powers which the French Senate now exercises? Let us begin with its special prerogatives. The right to join with the President of the Republic in dissolving the Chamber of Deputies is the first of these. It is a unique function of an upper chamber. In Great Britain the House of Commons may be dissolved at any time by the crown on the advice of the cabinet; in the United States the House of Representatives may not be dissolved by anyone under any circumstances But the French constitution expressly stipulates that the President of the Republic may dissolve the Chamber if the Senate concurs. This was thought by the framers of the constitution to be a power of supreme importance. Among other merits it was believed to be useful as a safeguard against a possible *coup d'état* by some ambitious chief of state.

THE SENATE'S SPECIAL PREROGATIVES:

1. CONSENTING TO A DISSOLUTION OF THE CHAMBER.

But the Senate's power to join with the President in dissolving the Chamber of Deputies has turned out to be a prerogative of very little consequence. The reason for this indicates that the makers of the French constitution did not clearly envisage the actual workings of the government which they were setting up. They provided that every official act of the president must be countersigned by a responsible minister. That meant, of course, that a decree dissolving the Chamber of Deputies, like any other presidential decree, would have to be so countersigned. In other words it is the ministers,

WHY THIS PREROGATIVE IS OF NO IMPORTANCE.

not the President of the Republic, who must take the initiative in asking the Senate to concur in a proposal of dissolution. But it stands to reason that no ministry will ever propose a dissolution of the lower chamber so long as it retains the support of a majority in that body.

So, what the framers of the constitution really did was to give the ministry, with the concurrence of the Senate, an opportunity to dissolve the Chamber whenever the latter showed itself hostile. If actually put into operation, that arrangement would be intolerable. It would lead to dissolutions and general elections every few months, because ministries are rarely able to keep control of a majority in the Chamber of Deputies very long. Usage has therefore decreed that the power of dissolution shall not be put into practice at all. Only once in fifty years has the Chamber of Deputies been dissolved before the expiry of its four-year term, and the outcome in that case was not such as to encourage any repetition of the experiment.[1] Nevertheless, there are many serious students of French government who believe that a regular use of the power of dissolution would in time conduce to ministerial stability.

2. SERVING AS A COURT OF IMPEACHMENT.

The second special prerogative of the Senate is that of serving as a "high court of justice for the trial of the President of the Republic, or the ministers, or to take cognizance of assaults on the security of the state." According to the constitution the president may be impeached for high treason only, but a member of the ministry may be haled before the Senate for any offense committed in the exercise of his official functions. For assaults on the security of the state the Senate may try any person whatsoever, whether he be a public official or not.[2] In such cases a presidential decree convokes the Senate into session as a high court of justice.

PROCEDURE IN IMPEACHMENTS.

The first step in an impeachment is ordinarily taken by the Chamber of Deputies which frames the charges. But in the case of assaults upon the security of the state, the accusation is not made by the Chamber but by the ministry. On three important occasions within the last fifty years the ministry has brought such accusations against men of prominence in French public life, a fairly recent instance being that

[1] See *above*, p. 422.

[2] This, it will be noted, is a wider power than is possessed by the Senate of the United States.

of Joseph Caillaux in 1920.[1] A bare majority in the French Senate is sufficient to convict, whereas in the Senate of the United States a two-thirds majority is required.

So much for the Senate's special and exclusive powers. It has been mentioned that the lawmaking authority of the French Senate is ostensibly co-equal with that of the Chamber of Deputies save in one respect, namely, that money bills must be first presented to the lower house, and passed by it before going to the Senate. Whether the Senate may amend such bills by increasing or decreasing the items at its discretion the constitution does not say. It simply provides that "money bills shall be first introduced in, and passed by, the Chamber of Deputies."

THE SENATE'S SHARE IN LAWMAKING: 1. MONEY BILLS.

But here again usage has made the silence of the constitution articulate. The matter was for a time in doubt and gave rise to repeated controversies between the two chambers, but in the end the Chamber of Deputies triumphed and its right to have the final word on all money matters is now virtually conceded. The Senate continues to offer amendments when money bills come before it. But it cannot insert new items, or increase old items except upon the proposal of a minister. Hence its amendments are restricted to decreasing or striking out items which are already in the bill. If the deputies agree to such amendments when the measure goes back to them, well and good. But if they do not agree, the Senate usually gives way. This, as a prominent senator once explained, is a "matter of expediency, not of law." But whether it be a matter of law or policy the effect is the same. The Chamber of Deputies in France, like the House of Commons in Great Britain, has gained virtual control of the national purse.

OFFSET BY USAGE.

Strangely enough the House of Representatives in the United States does not have this financial supremacy although such was the avowed design of the men who framed the constitution.[2] They intended that the lower branch of Congress should be the dominant factor in public

AN AMERICAN CONTRAST.

[1] Caillaux, a former prime minister, was accused of intrigues with the Germans during the war. He was convicted and sentenced to three years' imprisonment in addition to the loss of all political rights for ten years. But in 1924 his civil rights were restored to him and he again became prominent in French politics.

[2] "All bills for raising revenue shall originate in the House of Representatives;

finance. James Madison, indeed, predicted that the provision which confers on the House of Representatives the sole right to originate bills for raising revenue would unquestionably make it so. But Madison proved to be a false prophet. The Senate of the United States has developed greater influence than the House, not only in matters of general legislation but in the making of the tax laws. By the terms of the constitution it cannot originate bills for raising revenue, and by usage it cannot originate bills for the spending of money; but when a bill of either sort comes up from the House it can strike out everything except the preamble and substitute what is practically a new measure of its own. The Senate of France has acquired no such authority.

2. OTHER BILLS.

On all measures other than money bills the equal authority of the French Senate has never been seriously questioned. Such bills may be originated in the Senate, but most of them are in fact first brought before the Chamber of Deputies. If they pass this chamber they go to the Senate where they may be rejected or amended at will. When the two chambers disagree on amendments the bill is not sent at once to a conference committee as is the practice in the Congress of the United States. It merely travels back and forth from one chamber to the other. Meanwhile the leaders confer and try to reach a compromise. Sometimes each chamber appoints a committee to help effect an agreement, and these committees may confer, but they make no joint report. If the measure is one that has been sponsored by the ministers, it is their concern to find a solution of the deadlock and they try to do it by wheeling their respective followers into line. But if the Senate decides to stand its ground, the measure fails to become a law. A good many bills have perished in this way.

THE SENATE'S METHODS OF RESISTANCE.

"The function of the Senate is to resist," says Barthélemy, "and in its own way it fulfils this function." But rarely does it carry its resistance to the point of open rupture. It prefers to interpose the barrier of inertia. So, when some measure has been hurried through the Chamber of Deputies without adequate discussion, the Senate merely refers it to a committee and there it stays until public opinion can be sounded. Other problems then engage the interest of the deputies, and the matters which repose in the files of Senate committees are

but the Senate may propose or concur with amendments as on other bills." *Constitution of the United States*, Article I, Section 7, Paragraph 1.

sometimes forgotten. In any event the original ardor of the deputies has time to cool down, and compromise then becomes more easy.

The Chamber of Deputies, on some occasions, has taken a money bill, and tacked some non-financial reform to it in order that the Senate may be debarred from rejecting the latter. But this parliamentary subterfuge has not usually succeeded. The Senate merely separates the irrelevant provision from the main bill and sends it to a committee for study. It does this at times with proposals of fiscal reform which are included in the budget—taking the ground that the budget must be passed speedily but that other reforms can wait.

HOW IT CHECKMATES THE PRACTICE OF "TACKING."

In general the Senate has been hostile to new forms of taxation. For years it stood out against the imposition of an income tax. It has resisted proposals which aim to put an undue share of the tax burden upon inheritances and has displayed, on the whole, more solicitude than the Chamber of Deputies for the safeguarding of property rights. On the other hand it has deferred to public sentiment, as embodied in the labor program of the Popular Front (a majority bloc in the Chamber) during the past few years. And there have been times, with a conservatively minded ministry in power, when the Senate has shown itself the more liberal of the two chambers. All in all it has served its purpose as a balance wheel.

ITS ATTITUDE ON TAXATION.

The average Frenchman is neither a congenital reactionary nor a rampant radical. He wears his heart on the Left and his pocket on the Right. Accordingly he often finds that his sympathies are with the radicals while his interests are with the conservatives. That being the case the Chamber and the Senate, although openly in disagreement, may both represent him faithfully. One mirrors his political philosophy, the other his social and economic bias. The Chamber is his Don Quixote, the Senate his Sancho Panza. It has often been remarked, moreover, that Frenchmen have good memories,—in politics. They have not forgotten that the Senate saved France from the danger of a Boulangist dictatorship fifty years ago and from the folly of a general levy on capital after the war. They know full well the weakness of the lower chamber, which is to let itself be swayed by eloquence into hasty and ill-considered action.

A REFLECTION OF THE FRENCH TEMPERAMENT.

Nearer than any other European legislative body, in short,

the Senate of France approaches the ideal of what a second chamber ought to be. For the prime purpose of such a body is to serve as a counterpoise to the volatility of a popular chamber. It should revise, suggest, find fault,—and delay when necessary. It should interpose obstacles, but not insuperable ones, to the fevered impatience of younger politicians. To this end a second chamber should be constituted differently, but not too differently, from the other branch of the lawmaking body. The difference must not be so great that strong currents of public sentiment will affect one house and leave the other unmoved. A well-organized second chamber should try to represent "the interests rather than the opinions" of the people (as Edmund Burke once phrased it); but on the other hand it should never stand out too stubbornly against a strong tide of public opinion on any great issue. For if it does not bend it is apt to break—as the British House of Lords discovered in 1911.

SUMMARY

An excellent survey of the Senate's organization and work may be found in A. Esmein, *Droit constitutionnel française* (8th edition, 2 vols., Paris, 1927), Vol. II, pp. 333–478, and in G. Coste, *Rôle législatif et politique du Sénat sous la troisième république* (Montpelier, 1917). Attention may also be called to Joseph Barthélemy, *Le gouvernement de la France* (2nd edition, Paris, 1924), chap. v. There is an English translation by J. B. Morris (New York, 1924). The same author's volume on *Les résistances du Sénat* (Paris, 1913) is interesting. See also E. M. Sait, *Government and Politics of France* (New York, 1920), chap. v, and the chapter on "The Power of the Senate" in W. L. Middleton, *The French Political System* (New York, 1933).

CHAPTER XXVI

THE CHAMBER OF DEPUTIES

Every large body of men, not under strict military discipline, has lurking in it the traits of a mob, and is liable to occasional outbreaks when the spirit of disorder becomes epidemic; but the French Chamber of Deputies is especially tumultuous.—*A. Lawrence Lowell.*

In the constitutional laws of 1875 there is a great deal about the composition and powers of the Senate, but scarcely a word concerning the Chamber of Deputies. Save for the provision that its members shall be elected by "universal suffrage" the organization of the Chamber was left to be determined by ordinary legislation.[1] There were two reasons for this action. In the first place no differences of opinion existed in the national assembly as to how the Chamber should be organized. Everybody assumed that the lower branch of the legislature would be made up of members directly elected by the whole people. That being the case it did not seem to matter very much whether the election took place under one form of procedure or another. In the second place, it was felt that much might be gained by leaving the organization of the Chamber flexible. Before it dissolved, however, the national assembly adopted an organic law in which the method of electing deputies was prescribed, but the provisions of this electoral law have been amended several times since 1875.

WHY THE CONSTITUTIONAL LAWS DO NOT DEAL WITH THE CHAMBER.

As at present constituted, the Chamber of Deputies consists of 612 members.[2] It is, therefore, one of the largest elective chambers in the world. The deputies are chosen for a maximum term of four years. The right to vote extends to every male citizen of France, twenty-one years of age or over, who has been duly enrolled on the voters' list of any commune (or municipality) as having been a legal resident for at least six months

THE METHOD OF ELECTING DEPUTIES.

[1] The term "universal suffrage" has been interpreted in France to mean manhood suffrage

[2] Of these 10 are allotted to certain French colonies, 9 to Algeria, 26 to Alsace-Lorraine, and the rest to France as she was before the war.

prior to the compilation of the list. Persons in the active military or naval service and those who have been deprived of civil rights by judicial decree are excluded from voting. There are no educational tests for voters in France as in some of the American states, and no taxpaying requirements. There is no plural voting as in England, no absent voting as in America, and no compulsory voting as in Belgium.

THE SUFFRAGE.

Women are still excluded from voting in all French elections although repeated attempts have been made to give them suffrage rights. The Chamber of Deputies, on one occasion, passed by a large majority a bill to abolish the sex qualification, but the Senate by an equally decisive vote rejected the proposal and it has since, on several occasions, declined to reconsider its action. And, strange to say, it is not the conservatives, but the radicals who are mainly responsible for this. The women of France are more attached to the Catholic Church than are the male voters, hence woman suffrage might strengthen the influence of clericalism, which is the last thing that the radical groups in France desire. So democracy, as one keen-witted Frenchman has ironically remarked, "must be protected against itself, for what good is democracy unless it helps its own friends?" One is reminded of the legendary Ugolino who devoured his own children so that they would never be fatherless.

NO WOMAN SUFFRAGE.

France is one of the few great countries in which women have not been enfranchised. Yet the issue is not a major one in French politics. Certain organizations are keeping it alive, but the great majority of the women in France do not seem to be seriously disturbed about their deprivation of electoral privileges. Nor are their husbands and brothers greatly concerned about it, despite the fact that Frenchmen have placed so much emphasis upon "natural rights." Some day, sooner or later, woman suffrage will doubtless be granted in France, but the step does not seem to be immediately at hand.[1]

During recent years there has been much discussion of a proposal for "family voting" in France. In brief the father of a family, under this proposal, would be given one or more extra votes, depending upon the number of his children. Concerning the details of such a plan there is much difference of opinion, and a half-dozen schemes have been

THE PROPOSAL FOR "FAMILY VOTING."

[1] For a discussion of the issue see A. Leclere, *Le vote des femmes en France* (Paris, 1929).

worked out. Difficulties arise with respect to the electoral status of widows who are heads of families, and as to the position of unmarried daughters who are over age. What provision should be made for them in a system of family voting? The general argument in favor of *le vote familial* is that the family, not the individual, is the true unit in the social organization and that representative bodies chosen by a system of family voting will represent the people in terms of this true unit. On the other hand, the proposal is open to various objections of a practical sort.[1]

HOW VOTERS' LISTS ARE COMPILED.

Although the qualifications for voting are fixed by general law and hence are the same at all French elections—national, departmental, and local—the work of compiling the voters' lists is entrusted to the local authorities. In each commune or municipality the responsibility for preparing the *liste électorale* rests with a commission of three persons, namely, the mayor, a representative of the municipal council, and an official named by the prefect of the department in which the commune is situated. This commission first revises the old register by using information which is on file at the *mairie* or city hall.[2] Then the revised list is posted and if there are any wrongful omissions or inclusions, the interested parties may file protests. Such protests are considered by the electoral commission whose membership is enlarged for this purpose by adding two additional representatives of the municipal council. And if the decisions of this enlarged commission do not satisfy, there is an appeal to the administrative courts.

THE "ÉTAT CIVIL" AS A BASIS.

Apart from errors or oversight the names of voters are placed upon the list without any action on their own part. There is nothing corresponding to the English method of sending canvassers from house to house gathering the names of voters, or the American plan of calling on the voters to come and get themselves registered. There is no occasion to use either of these methods because all the essential information is on file in the office of the mayor. The records of the *état civil* contain the names of all who have moved into the commune during the year, or out of it. They also list the inhabitants who have died, or who have come of age, or who have lost their civil rights since the list was

[1] For further information on this topic see E. Harraca, *Sur le vote familial* (Paris, 1930).

[2] A perpetual census or *état civil* is maintained in every commune as a basis for the *état militaire* or roster of compulsory military service.

last revised. Owing to the accuracy of these records there are relatively few wrongful omissions or inclusions to be found when the list is posted.

ELECTION METHODS

France has tried, since 1875, various methods of electing deputies. During the first ten years the elections were based upon single-member districts, as in England and the United States. But this plan, to which the French gave the name *scrutin d'arrondissement*, was deemed unsatisfactory because it seemed to concentrate the attention of each deputy upon the interests of his own district rather than upon those of France as a whole. The districts were small, and it is an axiom of government that small districts elect small men. As Gambetta once said, it made the Chamber of Deputies "a broken mirror in which France could not recognize her own image."

THE ELECTION DISTRICTS.

So a plan of election by general ticket, or *scrutin de liste*, was adopted in 1885. Under this system the voters of each department (a department is the largest administrative district in France) chose four, or six, or ten deputies according to its population. But the plan of election-at-large also failed to satisfy. It failed to provide minority representation, it played into the hands of demagogues as the Boulangist upheaval showed, and did not produce any noticeable improvement in the quality of the men elected, so the old method of election by single-member districts was restored. But not to much purpose, for the dissatisfaction with it soon flared up again. After the close of the World War there was an agitation for the use of proportional representation and provision for it was made in 1919. Two general elections were conducted under this arrangement, but on the whole it satisfied the people even less than the preceding plans had done.[1] So finally, in 1927, the method of *scrutin d'arrondissement*, or single-member districts, was restored. Thus France, after fifty years of experimenting, has come back to the plan of election from which England and America have never departed.

THE CHANGE TO A GENERAL TICKET SYSTEM AND BACK AGAIN.

Any French citizen, twenty-five years of age or over, is eligible to

[1] An explanation and criticism of the French system of proportional representation (as it was used from 1919 to 1927) may be found in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922), pp. 107–108.

be a candidate for deputy. There is no formal nominating procedure. Any candidate can nominate himself. But the various party groups have their own machinery for selecting and announcing candidates. No ballots are prepared by the election officials but a merely formal declaration of candidacy is now required in the case of Chamber elections. Each candidate or each party group prepares its own ballots, which can be sent through the mails free of postage to all names on the voters' list. Candidates are allowed to enclose, along with the ballot, a single circular of limited size. Both the ballot and the circular, while prepared by the candidate or his party group and paid for by them, are printed by the public authorities. This is intended to keep all the ballots uniform in size, shape, and color. When the voter goes to the polls he takes one of these ballots with him (the one that he favors); he does not mark it in any way but merely seals it in an envelope and drops it in the ballot box.

HOW NOMINATIONS ARE MADE.

THE BALLOT.

A general election in France takes place on a date fixed by presidential decree, but it must come within sixty days preceding the expiry of the four years for which the Chamber was elected. It is always held on a Sunday, it being assumed that Sunday is the most convenient voting-day for everyone, wage-earner and employer alike. It also affords (what Frenchmen value highly) a chance for the voters to congregate around the polling place most of the day, arguing about the issues, the candidates, and the probable outcome.

THE ELECTION

The advantages of holding elections on Sunday are so obvious as to raise the question whether Americans might not profitably follow the Continental practice. The most convenient places for polling are the schools, which are always available on Sundays. The American practice of week-day balloting involves a slackening of industrial production on election day which is estimated at from ten to twenty per cent, due to the fact that workers are given time off to vote. And elections come oftener in the United States than in European countries.

ADVANTAGES OF SUNDAY ELECTIONS.

There would be objections to such a proposal, of course. Many puritanical souls would regard the holding of an election on Sunday as a new form of Sabbath desecration. But it would surely be a no greater profanation than the professional ball games, the motion picture shows, or the bathing-beach spectacles which now attract thousands of good

WOULD THEY DO IN AMERICA?

American citizens every Sunday afternoon when the weather is fine. If voting is a "sacred duty" (as we are so often assured from the church pulpits), why should there be serious objection to the performance of such a duty on a day that is consecrated to sacred things? The better the day, the better the deed. One should hasten to add, however, that sentiment rather than logic is what determines this matter in America, and it is likely to keep on doing it.

Polling places in France are designated by the prefects and subprefects, who are national officers. Schoolhouses and other public buildings are generally used. A few days prior to the election a notice (*carte électorale*) is mailed to every voter whose name is on the list informing him of the place and date of polling. On entering the polling room the voter presents this card, which identifies him. Then he is given a plain envelope with which he retires into a screened compartment. There he takes from his pocket the ballot which he has selected from among those sent to him by mail, puts it into the envelope, seals it up, and drops the sealed envelope in the ballot box.[1] The polling officials need do nothing but look at his card and give him the envelope.

POLLING PLACES.

In the villages and small towns, where there is only one polling place, the mayor acts as chief election officer, attended by four members of the municipal council who serve as his assistants These five constitute the bureau of the poll and by a majority vote decide all questions that may arise. In the larger cities, where there are several polling places, the mayor presides at one of them and designates various councillors to preside at the others. A bureau is similarly constituted for each polling place. All these officials give their services free—which is in sharp contrast with the American custom. In the United States everybody who serves in a polling place expects to be paid.

POLLING OFFICIALS.

Voting begins at eight in the morning and continues until six in the evening, unless different hours are fixed by the prefect. Any voter, after he has voted, is permitted to stay in the polling room as long as he desires. Hence the room is often so crowded that the members of the polling bureau find difficulty in doing their work. The air is dense with tobacco smoke, through which can be discerned a general shrugging

THE POLLING HOURS.

[1] If he has forgotten to bring his ballot he can write the name of his candidate on a slip of paper and put it in the envelope.

of shoulders and waving of hands as spirited arguments are conducted by the groups of partisans. Occasionally the arguments grow so warm that the presiding officer calls in a gendarme and instructs him to clear the room; but this must not be done unless the commotion makes it absolutely essential. In France the laws regard the polls as places of public meeting, where the voters settle the issues in person. Hence an election can be voided if the polling officials unnecessarily interfere with the voter's inalienable right to discuss the destinies of the nation, with all the accompanying pantomime, in full view of the ballot box.

COUNTING THE VOTES.

When the poll is closed the ballots are counted by members of the polling bureau. But if a large vote has been cast the officials may call upon bystanders for aid, as they frequently do. The room is as crowded as ever, even more so, and the counting proceeds with some difficulty. Any outsider who has seen it will marvel that accuracy can be obtained in the result. Yet the count is, on the whole, more accurate than in American polling places where a policeman keeps everybody except the officials out of range while the count is being made.

THE "BALLOTAGE."

In order to be elected, a candidate must receive a clear majority of all the polled votes. If no one meets this requirement a *ballotage*, or supplementary election, is held on the Sunday following and at this election a plurality is sufficient. Thus the plan works out pretty much as under the usual American scheme of primaries and final elections, with this difference, however, that the two pollings in France are only a fortnight (not a couple of months) apart.

DISPUTED ELECTIONS.

If disputes arise concerning the results of an election, they are decided by the Chamber under the constitutional provision which empowers it to determine the qualifications of its own members. Controversies are referred to committees, but the recommendations of these committees are not always accepted by the whole Chamber. The latter's action is largely influenced by partisan considerations. Protests may be filed on grounds of intimidation, bribery, or corruption, and if the Chamber upholds these protests it will annul the election. Then a new election is ordered. But the Chamber cannot impose any other penalty upon candidates who have been guilty of electoral corruption. They may, however, be prosecuted in the courts.

There is no law which limits the amount which a candidate may

legitimately spend in getting himself elected to the French Chamber of Deputies. So long as he does not spend it corruptly he may pay out as much as he likes and is not required to publish a statement of his expenditures. In England and in the United States there are stringent laws relating to maximum political expenditures, but in France there are no limitations of this sort. Nor does there seem to be need for any, since public opinion usually provides an adequate check. An outpouring of money on behalf of any candidate, or group of candidates, is likely to defeat its purpose in France for the people are not accustomed to it and would resent the innovation. The laws, moreover, do their best to assure each candidate an equal chance,—for example, by providing free billboards, giving every candidate his due share of space on them, and forbidding *affiches électorales* or campaign posters to be put up anywhere else. At the last election more than 10,000 of these free billboards were provided for the candidates in Paris.

ELECTION EXPENDITURES.

Candidates and party groups spend a good deal of money in France as elsewhere. While it is difficult to make an exact comparison there is reason to believe that an election campaign costs about as much in France as in Great Britain.[1] Campaigns and elections, on the whole, are conducted fairly, and save in very exceptional instances the ballots are counted honestly. Lord Bryce, however, tells a story of one polling place where, as the hour for closing approached, it was found that only a small vote had been cast. The mayor of the commune, on being informed of this, said in a cryptic whisper to the polling officials: "It is your duty to complete the work of universal suffrage," —and presumably they obeyed orders. Sometimes, in a hotly contested election, the rival partisans have invaded the polling place and engaged in a fist-fight during which the ballot box was smashed open and the ballots scattered to the four winds of heaven.

ABSENCE OF ELECTORAL FRAUDS.

At any rate the neighboring *estaminets* do a good business on election day, and politicians sometimes foot the bills. Places which sell intoxicating beverages are not closed in France on election day, as they are in America. Employers are alleged to be over-zealous at times in persuading their workers, and in rural districts it is sometimes said that the landlords bring pressure to bear on their tenants. A generation

PUTTING PRESSURE ON THE ELECTORATE.

[1] For a discussion of this and related matters see J. K. Pollock, *Money and Politics Abroad* (New York, 1932), especially pp. 284 *ff.*

ago it was contended by the radicals that the priests in many parts of France were exercising too much political influence over their parishioners, but today this complaint is seldom heard. Pressure now comes chiefly from the prefect, the subprefect, and other public functionaries. Some of these officials are quite obtrusive in their efforts to secure the election of deputies who will support the ministry. A ministry which is in power when the election comes has an advantage over its opponents by reason of the influence which it can persuade these officials to exert. Even in this respect, however, conditions are better than they used to be. With changes in ministries likely to occur at frequent intervals the prefects hesitate to commit themselves unreservedly to any candidate or party group. For although they cannot be summarily dismissed for activity in politics, they can be demoted by transfer if they hitch their chariots to a falling star.

ORGANIZATION, MEMBERSHIP, AND POWERS

THE CHAMBER'S SESSIONS.

The Chamber of Deputies meets each year on a date fixed by the constitution. It is not called together at the discretion of the ministry as is the British House of Commons. But in case of emergency the President of the Republic may call it together at an earlier date than that fixed by the constitution. Two sessions a year are held, one beginning in January and lasting until July; the other beginning in November and continuing through December. This short session is devoted chiefly to a consideration of the budget. With the exception of about three months, therefore, the Chamber is continually in session. The daily sittings begin at two o'clock in the afternoon and last until six or seven. When the urgency of business requires longer daily sittings the Chamber meets earlier in the day. It rarely prolongs its sessions into the night. Since 1879 the sessions have been held in the Palais Bourbon, a stately building with a Corinthian peristyle which stands on the left bank of the Seine directly across from the Place de la Concorde.

ARRANGEMENT OF SEATS.

The hall in which the deputies hold their sessions is semicircular in shape with a dozen or more rows of seats. Each seat except those in the front row has a small desk hinged in front of it. The front row is reserved for ministers, undersecretaries, and other executive officers as well as for members of committees who are present in connection with the business

of the day. Behind them the rows of seats are elevated like those of an amphitheatre. Facing the semicircle is a high chair in which the president of the Chamber sits, and in front of this, on a somewhat lower level, is the tribune from which the members address the House.

A deputy is allowed to speak from his place on the floor if he so desires, but as a rule he obtains recognition from the floor and then mounts the tribune where he can face his entire audience. This method of conducting the debates is in many of its practical aspects quite superior to the plan pursued in the English House of Commons and in the American House of Representatives for it ensures every member a chance to hear what is being said. There is no breaking in upon deputies while they are speaking, asking them to "yield the floor" as in Congress. On the other hand interruptions in the way of shouts and ironical cheers from some sector of the amphitheatre are not infrequent. It should be explained that the seats are assigned in sectors to the various political groups, the conservatives being given the extreme right and the communists the extreme left, with the moderate groups between. There are galleries to which outsiders are admitted except on days when the Chamber decides to meet in secret session.

THE TRIBUNE.

INTERRUPTIONS.

The constitutional laws of 1875 contain the curious provision that both the Chamber of Deputies and the Senate must remain in session for at least five months in every year, even if there is no business for them to do. But this provision has not given rise to any embarrassment because there has always been enough work to keep both Houses busy for an even longer period. Anyhow the chambers can adjourn if need be and the recess would be counted in reckoning the five months. The President of the Republic may adjourn both chambers for a period not exceeding one month, subject to the restriction that he must not do this more than twice during the same session. When the two chambers have been sitting for five months he may bring their sessions to an end by a decree at any time. Finally, he may dissolve the Chamber of Deputies with the consent of the Senate; but this power has not been exercised for more than sixty years.

ADJOURNMENTS AND PROROGATIONS.

As for the men who make up the Chamber of Deputies there is a general impression that they do not average up to the standards of the British House of Commons. It is difficult to tell how much real

basis for this impression there may be, because the quality of t men who sit in legislative bodies is something tl does not lend itself to statistical computation. Th are no yardsticks wherewith to measure legislat capacity. It is all a matter of individual judgment colored by p triotism or the lack of it. One may doubt, however, that the gene impression is well founded in this case, although it is quite true t the practice of electing deputies from small districts has tended fill the Chamber with local politicians. It has helped to lower position of deputy to that of a patronage-seeker. His mandate Paris is less that of a lawmaker than that of a village ambassador. large portion of his time must be spent in finding jobs for the pay-patriots of his arrondissement, visiting the ministerial offices in qu of favors, and serving as a messenger for everybody who has offi business at the capital.

PERSONNEL OF THE CHAMBER.

Certain it is, at any rate, that to an outsider the deputies do look impressive. Most of them dress carelessly and look unkem This is true even of some who are men of world renown. The aver deputy, it is said, goes home every Friday evening and gets bacl Paris on Tuesday with a clean collar and a new grist of errands his constituents. Incidentally he travels free on the railroads, wh is why he goes home so often. The decentralization of partie France undoubtedly has had an influence upon the kind of r elected to the Chamber. It has given a great advantage to th candidates who can intrigue and form alliances, whose polit principles are not firmly fixed, and who are willing to compror for votes. Such men are not likely to be conspicuous for their dig or poise.

Yet, "His Serene Highness, the deputy" is a pivotal figure French government. He is local leader and boss combined. Mi tries rise or fall at his command. He is looked upo the real sovereign of France, says Siegfried, "by millions of nobodies who make up the French natio And often he acts the part. The deputy's attitude toward the mi ters, or even toward the President of the Republic, is not on quiet deference as is the corresponding relation in England America. President, ministers, and prefects may be the governn of France, but the deputy is the people of France. *L'État c'est m* if he doesn't say it, he often thinks it.

THE SOVEREIGN DEPUTY.

[1] André Siegfried, *France—A Study in Nationality* (New Haven, 1930), p.

The Chamber of Deputies is unlike the House of Commons in that very few of its members come from families allied with the old nobility. It contains no considerable element analogous to the English squires or country gentlemen. There are many large landowners in France, especially in the western part of the country; but few ever get themselves elected. Unlike the American House of Representatives, moreover, the Chamber of Deputies does not contain a large number of men who directly represent the interests of agriculture, industry, and commerce. It includes relatively few men who have ever worked with their hands. The largest element is made up of professional men,—lawyers, physicians, journalists, retired public officials, educators—and always a good many professional politicians.

VOCATIONS IN THE CHAMBER.

Frenchmen complain that there has been a steady decline in the standards of ability, independence, and intelligence among their lawmakers during the past fifty years. In this they are not unique, for one hears the same complaint in England and America. They grumble that there are no Thiers and Gambettas in the Chamber of Deputies today, just as Englishmen lament the absence of Disraelis and Gladstones in the House of Commons, while Americans seek in vain for Websters and Clays among contemporary congressmen. The trouble is that everywhere the world idealizes the men of the past and exalts them to a pedestal on which their contemporaries would not have placed them. A legislative body may give a popular impression of mediocrity for the mere reason that the times give it nothing heroic to do.

HAS THE STANDARD DECLINED?

In general, the membership of the French Chamber nowadays carries a strongly bourgeois flavor. A man belongs to the *bourgeoisie* in France if he has saved some money (but not too much), or has a business of his own (not too large), or practices a profession (but not too successfully), or owns some hectares of good land (but not too many),—in other words if he ranks in what Englishmen term the middle class. Men from this category usually begin their apprenticeship in a municipal council. Then, having been elected to membership in the Chamber, the bourgeois deputy combs Paris for a modest room in some section where the American tourist has not yet stimulated the landlords to higher rentals. He shies at silk hats and swallow-tail coats, rides to the Palais Bourbon on the underground or in a bus, gets his meals *en pension*, and votes against proposals to raise taxes.

THE BOURGEOIS FLAVOR

But the average deputy is a better man than he looks. He will surprise you not only with a level head but with a silver tongue. Most members of the Chamber can speak eloquently, lucidly,—and fast. Nowhere will one find better diction than in the French lower house, unless it be in the French upper house.

DEPUTIES ARE POORLY PAID.

Members of the Chamber are paid sixty-two thousand francs per annum (about $1,600 at the present rate of exchange). This is absurdly low. But they also receive allowances for secretarial help and for the entertainment of constituents who come to Paris. There is also a fund out of which pensions can be paid to needy ex-deputies, as well as their widows and orphans. A small deduction is made from the pay of each deputy for this fund. But everyone who is elected to the Chamber expects to go higher and thus to obtain a larger emolument from the public purse. He has visions of ultimately becoming *ministrable* and getting a place in the ministry. Since ministries are frequently reconstructed this hope is by no means a forlorn one.

THE DEPUTY'S WORKING DAY.

Meanwhile the deputy dearly earns his modest stipend by serving as errand-boy-extraordinary for those who have the votes at home. His daily route is to the various bureaus and back again. For the ministers and their chief subordinates dispense the honors, the medals and the tricolored buttons, the administrative posts, mostly of small consequence, the tobacco licenses, and the college bursaries. To them the deputy goes when his commune or arrondissement desires a bridge or a road, when a farmer wants to be compensated for damage done to his vines by a hailstorm, when a taxpayer disputes the taxgatherer's claim, when a parent wishes to have an indulgent view taken of his son's performances in an examination, or when a litigant thinks that a word of recommendation might help him in a court of justice.

The voter writes to the deputy, and the deputy approaches the minister. When a grant of money, or a decoration, or a salaried post is in question, the minister is made to understand that the deputy's support at the next critical vote in the Chamber may be affected by the degree of benevolence that the government displays. Thus there is a continuous process of triangular huckstering between the voters, the deputy, and the ministers. The voters back home are insistent; the ministers may demur; and the deputy does most of the worrying. His job is vexatious, none too dignified, and ill-paid,—

which may be the chief reason why France does not get better deputies.[1]

The oratory of the pen counts for more in France than in England or the United States. Candidates for the Chamber make speeches, of course, but in reaching the public they place greater dependence upon the newspapers. Nearly all French newspapers are aggressively partisan and personal; they profess none of the party independence that marks some of the great daily journals in America. The French newspaper is a personality, not an institution. It is the organ of its editor and the French editor never hides his light under a bushel. His editorials are flaming appeals, and he prints them on the front page with his name signed to them. So, when an editor or one of his close friends happens to be a candidate, the newspaper will devote its whole energies to the task of electing him. The news of the day will go off the front page if necessary. In such cases the editor gives the public what he thinks the public ought to want, and the public takes what it gets.

INFLUENCE OF NEWSPAPERS.

There are real debates in the Chamber of Deputies, with set speeches eloquently delivered. These speeches are not usually long, —they rarely exceed a half hour,—but they are earnest, often impassioned, and sometimes brilliant. The deputies interrupt with applause or with taunts and cries of all kinds, while the presiding officer brings beads of perspiration on his face by vigorously ringing his bell for order. If that does not serve to quell the tumult he exercises his *droit de chapeau*, or right to put on his hat in preparation for leaving the Chamber. As a last resort he may adjourn the sitting and leave. To the onlooker from the galleries the debates in the French Chamber seem uproarous at times, but there is not much personal rancor behind the oratorical barrages. Deputies may shake fists at a safe distance on the floor or even throw out challenges to a duel—but an hour later they may be seen fraternizing in the corridors.[2]

DEBATES IN THE CHAMBER

The powers of the Chamber do not require much explanation. Its affirmative action is essential to the enactment of all laws whatsoever. All financial measures must originate in this branch of the

[1] See Lord Bryce, *Modern Democracies*, Vol. I, p. 258.

[2] See the excerpt from the article on "The Best Show in Paris" which is printed in Norman L. Hill and Harold W. Stoke, *Background of European Governments* (New York, 1935), pp. 299–301.

French parliament, and although the Senate is not constitutionally debarred from amending or rejecting such measures it has refrained from serious interference except on a few notable occasions such as its rejection of the Blum ministry's plan for a temporary financial dictatorship in 1938. Passing the budget is the Chamber's big task each year and in this field its decisions are virtually final. Changes, after the budget has gone to the Senate, are relatively infrequent. As for non-financial measures, most of them also originate in the Chamber of Deputies, but the Senate feels free to amend, delay, or reject these bills at its discretion. As has been pointed out, the Senate's usual course (when it does not like a bill), is to refer the measure to a committee for suffocation. But if the Chamber shows a live and sustained interest in the measure it will stir up the ministers and the ministers may then prod the Senate into concurrence. The process of lawmaking, however, is reserved for the next chapter.

THE CHAMBER'S POWERS.

Besides the books listed at the close of the three preceding chapters, mention may be made of Eugène Pierre, *Traité de droit politique, électoral, et parlementaire* (5th edition, Paris, 1919), Charles Benoist, *Les lois de la politique française* (Paris, 1928), M. Aragon, *Guide pratique des éléctions législatives* (Paris, 1928), Henri Leyret, *Le gouvernement et le parlement* (Paris, 1919), Henri Maret, *Le parlement* (Paris, 1920), Pierre Dominique, *Monsieur le parlement* (Paris, 1928), and the various illuminating articles which appear from time to time in the *Revue politique et parlementaire*.

CHAPTER XXVII

THE PROCESS OF LAWMAKING

He that makes the law knows better than anyone else how it should be executed and interpreted. It would seem, then, that there could be no better constitution than one in which the executive power is united with the legislative.—*Jean-Jacques Rousseau.*

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.—*Montesquieu.*

WHAT THE LEGISLATIVE PROCESS INVOLVES.

Legislative bodies have a threefold purpose: they make the laws, they authorize the expenditures, and they control administrative policy. By legislating they provide a system of rules governing the conduct of the people; by adopting a budget they furnish the funds with which government can be carried on; and by means of inquiries, interpellations, and investigations they exercise a continuous supervision over the administrative authorities.

This represents a vast amount of work, and no legislature would ever manage to get it done without rules of procedure. These rules are not designed merely to expedite the passage of laws. Were that the case there would be no need for so many of them. They aim also to ensure economy in public expenditures, to safeguard the rights of minorities in the legislative chamber, and to provide channels through which the ministers or other executive officials may be controlled. What we customarily call the "process of lawmaking," therefore, is in reality a good deal more than that. It is a process of legislation, appropriation, and supervision combined.

PARLIAMENTARY OFFICIALS.

Both branches of the French parliament elect their presiding officers and determine their own rules of procedure. The presiding officer is chosen, in each chamber, by secret ballot. Two or more vice presidents are chosen at the same time, also several secretaries and some additional functionaries. Together these officials serve as a bureau or administrative committee.

The position of the president in both chambers differs from that

usage, yet it hardly seems consistent with the commonly recognized usages of democratic government. Nor does it make for efficient committee work, because experience has everywhere shown that there is no easier way of getting information than by means of public hearings. On the other hand, some members of the committees always confer informally with the leading supporters and opponents of any important measure which they are considering. This ensures both sides a chance to reach the ears of the committee in a roundabout way before a report is made. Each committee is required to keep a detailed record of its proceedings and this record is deposited in the archives of the Chamber where any deputy may inspect it. Before making its report on any measure of importance the committee also ascertains the attitude of the ministers in relation to it.

NO PUBLIC HEARINGS.

The French process of lawmaking superficially resembles the English in one important feature, namely, in the distinction which is made between government measures (*projets de loi*), and private members' bills (*propositions de loi*). Government measures are submitted to parliament by a member of the ministry. Immediately upon introduction they are referred, without reading or debate, to the appropriate standing committee. But bills relating to public, as well as to private matters, may also be introduced by any senator or deputy. All such bills are also referred without debate to a standing committee in the same way as government measures. In the British House of Commons a private member's bill has relatively little chance of passing unless the ministry supports it, or, at any rate, assumes an attitude of benevolent neutrality towards it. But in France this is not the case. Individual deputies, and groups of deputies, bring in resolutions formally requesting the ministers to father some *projet*, and they also come forward with their own *propositions* by the hundred at every session. Whether a private member's bill gets consideration is not determined in France, as in England, by drawing lots for places on the calendar. In the Chamber of Deputies the order of business is determined each week by a meeting known as the *conférence des présidents*. This gathering is attended by the president and vice presidents of the Chamber, the chairmen of all standing committees, and the leaders of the various party groups. Together these key-men decide what measures shall have the right

"PROJETS DE LOI" AND "PROPOSITIONS DE LOI."

THE "CONFÉRENCE DES PRÉSIDENTS."

of way. Naturally they keep in mind the wishes of the ministry, but they see to it that private members get a square deal also. It should be mentioned that while bills may be introduced in either branch of the French parliament, most of them originate in the Chamber of Deputies.

When a committee decides to report a bill it does not entrust this duty to its chairman. It appoints one of its own members to serve as a *rapporteur* for the measure and it is his function to explain it on the floor of the legislative chamber. This it does even in the case of government measures—a practice which contrasts sharply with that of the House of Commons. In England a government measure is always presented, explained, and defended on the floor by a member of the ministry. In the American House of Representatives bills are ordinarily reported to the House by the chairman of the committee which has considered them. But in France the "reporters" appointed by the committees to steer government measures through parliament are neither ministers nor chairmen; they are private members. The ministers and chairmen may join in the debate, and usually do; but they do not direct it. For the moment the minister who has framed the bill, and who presumably knows most about it, is eclipsed by a private member.

HOW BILLS ARE REPORTED.

Here is a division of functions and responsibility which has not been altogether beneficial in its effects. There is much to be said for the English plan of having each minister pilot his own bills through the House. There is also a good deal to be said for the American plan of having the chairman of the committee do the steering. In both cases the responsibility is fixed and unified. The French method divides the leadership. It consequently divides the responsibility and this diffusion would be fatal were it not for the fact that the reporters and the ministers usually work in close coöperation. There is this to be said, also, that since a *rapporteur* has usually only one important bill per session he can focus his best efforts on it and become thoroughly conversant with all its implications. Incidentally the successful steering of an important bill may give the *rapporteur* great prestige and virtually ensure his early entrance into a ministry.

DEFECTS OF THE SYSTEM.

When a committee is ready to report a measure the text, along with the reporter's *exposé*, is printed and distributed. On the day appointed for debating it the reporter mounts the tribune and

explains his committee's recommendation. Speeches dealing with the general principles of the bill may then follow, but questions relating to details and phraseology are passed over. No amendments are in order at this stage. When the debate on the general features of the bill has been finished a vote is taken on the question of proceeding to consider the details ("passing to the articles" it is called). If the Chamber votes *No* on this question the measure is defeated. But if it votes *Yes* the bill is then taken up section by section as in the House of Commons. During this stage amendments may be proposed by any member. In order to be recognized by the chair, however, a member must put his name on the presiding officer's roster and take his turn.[1] Sometimes, when important measures are under consideration, this roster contains scores of names and the debate runs on day after day.

THE PROGRESS OF A MEASURE IN THE CHAMBER.

THE DEBATES

In the House of Commons it is an unwritten rule that no one except a member may speak from the floor. Even ministers may not speak there unless they are members of the House. Congress is also averse to hearing the voices of any but its own members, although the President of the United States is given the privilege of reading a message to it at any time. Members of the American cabinet never speak in either House. If they attend they sit in the gallery. But in the Chamber of Deputies non-members go to the tribune and take a hand in debates—ministers whose seats are in the Senate, undersecretaries, bureau chiefs, and even various experts who may be designated by the minister to explain the technical phases of a measure. These functionaries may be called in to elucidate, defend, or suggest changes. They are especially in evidence during the debates on the budget. Expert officials from the various branches of the administrative service come in and are sent to the tribune to explain what the figures mean. This plan is not without its advantages, for it means that the talk is by men who are close to the figures and know what they are talking about—which cannot always be said of the budget debates in other legislative bodies.

OUTSIDERS PARTICIPATE IN THE FRENCH DEBATES.

[1] This does not apply to the ministers or to the reporter who is in charge of the bill, both of whom are entitled to recognition whenever they ask for it.

Debates on the details of measures might be indefinitely prolonged in the French Chamber were it not for two considerations which operate to keep discussion within bounds. One is the fact that most of the bills are short and simple; they do not contain page after page of detailed provisions as is the case with so many legislative bills in Great Britain and America. In France the details are generally left to be worked out by the council of state and promulgated in an executive decree. This saves the time of parliament, ensures a more careful consideration of details, and gives flexibility to the laws.

METHODS OF LIMITING DEBATE:

1. NO DISCUSSION OF DETAILS.

In the second place the rules permit the Chamber to put an end to debate on any clause or section of a bill by applying the clôture. This can be done by majority vote at any time provided at least two members have spoken on the question, one on each side. A motion to apply the clôture cannot be debated in the ordinary way, but before the motion is put an opportunity is always given for one deputy to speak against it. The clôture, if carried, does not debar a member of the ministry from continuing the discussion, and ministers frequently take advantage of this privilege. As a matter of fact this method of limiting debate is rarely used in the French Chamber, very much less frequently than in the House of Commons.

2 THE CLÔTURE.

There are other ways of keeping the debate within bounds. Until quite recently there was a schedule of time limits. Ministers were permitted to speak as long as they desired; *rapporteurs* were limited to one hour, while individual deputies proposing amendments were given a half-hour, and ordinary participants in the debate had the bell rung on them in fifteen minutes. This rather mechanical arrangement has now been superseded by a new and more flexible one. The leaders now arrange and agree upon the order of speakers and the time limits before the debate begins.

OTHER LIMITATIONS ON DEBATE.

In Great Britain and in the United States all bills are given three readings. In France there are only two readings—one at the time of the bill's introduction and the other at the close of the debate on the articles. Votes are taken by a show of hands, or by calling on the *Ouis* and the *Nons* to rise in succession. If there is any doubt as to the accuracy of the count it is not customary to demand a roll call. Instead of

METHODS OF VOTING IN THE CHAMBER.

calling the roll, a balloting urn is passed from seat to seat and each deputy drops his ballot into it. There is no secrecy in this balloting; each deputy can see how his neighbors vote.[1] If a deputy is absent he may ask some fellow member to put in a ballot for him. France is one of the few countries which permits its legislators to vote by proxy.[2] Finally, if the result of this ballot does not satisfy the Chamber, fifty members may demand a "ballot at the tribune." In this case the names of the deputies are called in alphabetical order. As each name is called the deputy walks to the tribune and hands his white or blue ballot to one of the secretaries. No proxy voting is allowed in this case, hence the balloting at the tribune sometimes gives a different result from the balloting in the urn.

When a measure has safely passed the Chamber it goes to the Senate where there is much the same procedure. The rules of the Senate are slightly simpler and there are likely to be fewer amendments from the floor. Having passed the Senate the bill is laid before the President of the Republic—not for his signature but for promulgation. The president's approval is not essential to the validity of a law, but the constitution authorizes him to delay promulgation, meanwhile asking the chambers to reconsider their action. This power to delay promulgation is of no practical importance, however, because the president never exercises it

MEASURES WHICH PASS THE CHAMBER ARE THEN SENT TO THE SENATE.

In order to be duly enacted, a bill must be passed by both the Senate and the Chamber of Deputies in exactly the same form. Any amendment made by one chamber will serve to defeat a measure unless it is agreed to by the other. Bills are frequently hung up by a failure to procure agreement on some particular provision, sometimes a minor provision. When this happens with respect

WHAT HAPPENS WHEN THE TWO HOUSES DISAGREE?

[1] The ballots are in the form of small slips of paper which are provided by the bureau of the Chamber at the beginning of each session. Every deputy is given a package of these slips, of which some are white and some are blue, each slip having his name printed on it. He keeps these slips in the little swivel desk which is attached to the back of the seat immediately in front of his own. When a balloting takes place he uses a white slip to vote Yes, or a blue slip to vote No.

[2] The privilege of voting by proxy has been considerably abused. "A deputy who is detained by political or social duties asks some friendly member to cast a ballot for him; by way of being on the safe side he asks several of his friends to do so. Half a dozen of his ballots may be thrown into the urn. Ballots are often cast for members without their permission and even for members who are present." E. M. Sait, *The Government and Politics of France* (New York, 1920), p. 220

to government measures the usual practice is for the ministers to intervene and break the deadlock if they can. They may suggest a compromise and urge it from the tribune in both chambers. This they are able to do in a direct and effective way because they have the right to speak in both. Or, if the issue is one of real importance, the ministers can demand that one of the chambers recede and may threaten to resign if it does not. In the case of private members' bills the ministers do not intervene, but compromises are sometimes arranged by a joint committee of conference, after the American fashion.

BUDGETARY PROCEDURE

THE FRENCH BUDGET SYSTEM:

In France, as in other countries, the most important business of the legislative body is the levying of taxes and the making of appropriations France has had a national budget system for many years, and in its main features this system is like that of Great Britain. The work of framing the budget is begun each summer by the minister of finances who requests the other ministers to prepare their estimates for the next fiscal year. When these estimates have been obtained they are consolidated into one huge document and placed before the ministry for revision. Accompanying the estimates is a statement, prepared by the same minister, showing the anticipated revenues. The ministry revises and adjusts the figures as may seem advisable, its aim being to bring the ordinary expenditures within the limit set by the estimated national income.

1. THE ESTIMATES

2. THE TWO TYPES OF EXPENDITURE.

In France the budget makes a distinction between ordinary and extraordinary expenditures. The former include, or are supposed to include, all the current expenses of government; the latter comprise expenditures which are not of a current nature, such as the cost of carrying on a war or restoring devastated territory or providing some great public improvement. Extraordinary expenditures are not paid out of current revenue but by borrowing money. The distinction is sound in principle but in practice has left much to be desired. There is a strong temptation to secure a balance between current revenue and current expenditure by transferring to the "extraordinary" list things which do not really belong there. French ministries did this on a considerable scale after the war. Billions of francs were

borrowed for extraordinary expenses on the assumption that the money would be repaid out of German reparations which ultimately were not forthcoming.

When the ministry has finished with the estimates of receipts and expenditures they are presented in a voluminous *projet* to the Chamber of Deputies.[1] This is done by the minister of finance who may use the opportunity to give the Chamber a general review of the government's fiscal affairs. But there is no regular "budget speech" as in the House of Commons. The Chamber, after hearing the minister's general survey, refers the whole matter without debate to its committee on finance, which is the most important of all its standing committees. This committee forthwith pitches into work on the ponderous *dossier* and may spend months at its task. Public hearings are not held, as in Congress, but the budget committee consults freely with the financial officers of all the ministerial departments. Formerly a good deal of the work was delegated to subcommittees, but in recent years this practice has been largely abandoned.

3. THE "PROJET" IS LAID BEFORE THE CHAMBER AND REFERRED TO THE BUDGET COMMITTEE.

On the whole, however, the committee on finance works in cooperation with the ministers and rarely assumes a hostile attitude. It is free to insert, strike out, reduce, or increase any item,—and it does make a good many changes, but the practice is to make no substantial alterations, particularly by way of increase, unless the committee is assured that the ministry will approve. On some occasions, however, there have been considerable modifications and it is said that the ministers have learned to pad their estimates in order to be prepared for reductions at the hands of the committee on finance.

When the committee has concluded its work, the revised budget is laid before the whole Chamber where it is dealt with like any other government measure. There is a debate on its general principles, followed by a consideration of the "articles" or items. The *rapporteur* of the budget committee, not the minister of finance, is in charge of the measure: the minister is merely his adjutant. This is in sharp contrast with the English practice of having the chancellor of the exchequer guide the budget through the House of Commons. Nor does it closely resemble the procedure in Congress where the chairman

4. THE BUDGET DEBATE.

[1] In printed form the budget is a document of several hundred pages and contains forty to fifty thousand items, all grouped by administrative departments.

of the committee on appropriations brings the budget before the House and assumes the task of getting it through. Like this chairman, however, the reporter of the budget committee in the French Chamber is invariably a skilled and experienced parliamentarian. He sits on the front bench during the budget debates, with the members of his committee alongside him. As groups of items are taken up in succession he sees to it that questions are answered and objections met. The minister of finance also takes a prominent part in the debate, and is usually the most frequent participant in it; but the reporter is the man who does the steering. It is his nod that sends speakers to the tribune.[1]

There is one other feature in which the French budget procedure differs from English, and it is of much significance. Mention has been made of a famous rule in the House of Commons which provides that no proposal of expenditure can be considered unless it emanates from the crown, that is, from the cabinet. In the Chamber of Deputies there is no such provision, either by rule or by usage. The Chamber can insert new items in the budget or increase the size of items already there.[2] And this freedom it often utilizes, even in the direction of revising the budget upwards. It is true, of course, that the Chamber cannot take this action against the resistance of the ministers unless it is ready to force the ministry's resignation; but it is equally true that the ministers, being practical politicians, do not force the issue to that alternative if they can avoid it.

THERE IS NO RULE IN FRANCE THAT PROPOSALS OF EXPENDITURE CAN ONLY BE MADE BY A MINISTER.

In matters of this kind the traditions of a lawmaking body count for more than its formal rules. And the traditions of the Chamber of Deputies are steadily hardening along lines similar to those of the House of Commons. The deputies realize that a minister of finance cannot make a balanced budget if the Chamber insists upon changing items at will. A national budget is at best a complicated affair,

BUT USAGE HAS TENDED TO SECURE THE SAME RESULTS.

[1] The work has now become too heavy for a single *rapporteur*, so it is usually divided among several of them—each having responsibility for a portion of the budget.

[2] Since 1910, however, the Chamber has had a rule that no private member may propose during the debate on the *loi des finances* any amendment involving the establishment of a new public office or the increase of any existing salary or pension. Nor may any private member offer a resolution asking the ministry to propose such action.

with all its parts adjusted and interlocked. If you change one ite there are equally good reasons for changing others, and presently tl whole budget is torn wide open. As a practical matter, accordingl there is a strong incentive to let the items stand as they are. As a additional safeguard the rules provide that no "riders" can be a tached to the French budget on its way through parliament.[1]

In addition to proposing changes in the budget when it is und consideration, any member of the Chamber may introduce an ind

PROPOSALS TO SPEND MONEY INTRODUCED BY DEPUTIES.

pendent proposition which involves the expenditure money. Such proposals go to one of the standing cor mittees, and if favorably considered they are then r ferred to the committee on the budget from which few of them may come back to the whole Chamber for discussio The committee on finance has adopted the practice of refusi to report any private member's proposal to spend money u less the minister of finance gives his approval.[2] This practice h strengthened the ministry's control over appropriations. The mi istry's hand would be even stronger if appropriations could be ma

THE PRINCIPLE OF "ANNUALITÉ."

for a longer term than a single year. But this is n permitted. The principle of *annualité*, on which Fren statesmen lay great emphasis, requires that all re enues and all expenditures shall be authorized for one year on This requirement is not expressed in the constitutional laws of 18 but rests on an unwritten law which has been scrupulously observ since the days of the Great Revolution.

When the budget in the form of a *loi de finance* has passed the Cha ber it goes to the Senate and is at once referred to the finance co

THE BUDGET IN THE SENATE.

mittee in that body. But this committee does not ke it long or study it very carefully. Very promptly comes back and is debated by the Senate as a whc Under certain limitations any senator may propose amendmer Now and then important changes are made by the Senate and

[1] A "rider" is a clause or provision, usually irrelevant to the measure its which is tacked to an appropriation bill on its way through the legislature. example, the Congress of the United States in 1919 attached to the agricult appropriation bill a rider which sought to abolish daylight saving. Presic Wilson vetoed the measure because of this rider.

[2] In 1934, moreover, the Chamber adopted a rule that "no legislative p posal susceptible of directly or indirectly increasing public expenditures o diminishing treasury receipts may be introduced unless it comes within context of the government budget bill or of other government bills authori or repealing appropriations"

bill is returned to the Chamber, where the amendments may be accepted, or, as more often happens, they are rejected. In the latter case the minister of finance endeavors to effect a compromise, and in this he is aided, if need be, by a joint committee of conference. Eventually an agreement is reached and the budget goes to the Elysée for promulgation by the President of the Republic.

THE CHAMBER'S CONTROL OF FINANCE.

From the foregoing outline of budget procedure it will be seen that although the control of national finances exercised by the Chamber of Deputies is not so complete as that of the House of Commons, there is a considerable resemblance between the two. In both countries the ministers have the initiative, but in both of them the lower chamber controls the ministers. Every year, in both countries, a full account of all money spent during the preceding year must be laid before the representatives of the people. While it is true that the French Senate may amend the budget, while the House of Lords may not, this difference is not of great practical significance because the French Senate usually recedes when the Chamber insists. Not so the Senate of the United States. It amends money bills with a free hand and when the House of Representatives declines to concur the issue goes to a conference committee where the Senate often wins. One might sum up the matter in this way: The House of Commons has complete control of national finances both in law and in fact; the Chamber of Deputies has it in fact but not in law; while the House of Representatives has it in neither.

QUESTIONS ADDRESSED TO THE MINISTERS.

The Chamber's control of the French ministry is a corollary from its power over the purse, for there is nothing that a ministry can do without funds. Governments must have nourishment in order to live. But the French Chamber has other ways of holding the ministers to account. Its members have the privilege of questioning the ministers on the floor. Any deputy can ask questions, either orally or in writing. The minister to whom questions are addressed must answer them unless there are reasons of state which make it advisable to refuse. Refusals to answer questions relating to diplomacy are sometimes based on this ground. When a minister answers a deputy's question it is permissible for the latter to reply; but no further debate is permitted. The president of the Chamber merely declares the incident closed. Many questions are asked at every session, some of them relating to the most trivial details of administration.

THE INTERPELLATION PROCEDURE

A much more energetic means of enforcing the continuous responsibility of ministers to the Chamber is provided by the formal questioning procedure known as the interpellation. This is a feature of great importance in France because it often settles the fate of ministries and in fact affords the usual way of determining whether a minister possesses the confidence of the Chamber. In England a ministry rarely goes out of office except when the people pronounce against it at a general election; in France it is usually given its *coup de grâce* by an adverse vote on an interpellation in the Chamber. An interpellation is a formal question framed by some member of the Chamber and addressed to a minister; it differs from the ordinary question in that it must always be in writing; it paves the way for a general debate in which everyone has the right to take part, and the debate on an interpellation can only be closed by a vote.

A CHARACTERISTIC FEATURE OF FRENCH PARLIAMENTARY PROCEDURE.

An interpellation may be framed by any member of the Chamber and may relate to any question of public policy except that no interpellation may be raised on matters which come up in connection with the annual budget. Couched in the form of a question the interpellation is presented to the presiding officer of the Chamber who reads it aloud and then transmits it to the minister concerned, or, if it raises a question of general policy, to the prime minister.[1] If the interpellation is one which would involve a discussion "incompatible with the national interest" they may refuse to accept it. Such refusals, however, are not frequent. Ordinarily the challenge is accepted, whereupon a time is fixed for the minister's reply and for the debate thereon. The debate may be brief or prolonged according to the amount of interest which the Chamber displays in the matter. But in any case it must be concluded by a vote; there is no other way by which the Chamber can get back to its regular order of business.

HOW INTERPELLATIONS ARE PRESENTED.

The motion to close an interpellation debate is made in some such form as this: "The Chamber, having heard the explanation of the minister, passes to the order of the day," or "The Chamber, having heard the declaration of the minister, and being convinced that the grievances voiced dur-

PUTTING THE "ORDRE DU JOUR."

[1] Illustrative examples are printed in Norman L. Hill and Harold W Stoke, *Background of European Governments* (New York, 1935), pp. 307–311.

ing the course of the debate will be duly set right by the government, returns to the order of the day." Several motions, in fact, may be offered, in which case the simple motion to resume business, accompanied by no qualifying clause, is always voted on first. Sometimes a ministry rests content with this simple motion, but as a rule it insists on an expression of confidence—an *ordre du jour motivé*, it is called.

SIGNIFICANCE OF THE INTERPELLATION.

Now the significance of this procedure arises from the fact that the ministers must resign unless they can obtain a favorable vote in the Chamber on the question of resuming routine business. Most interpellations do not embody a mere quest for information. When it is information that a deputy wants he can get it more quickly and more easily by asking an ordinary question. The purpose of the interpellation is twofold: First, to draw the attention of the whole Chamber (and, incidentally, of the newspapers) to some particular phase of ministerial policy which is believed to be open to criticism, and, second, to precipitate a vote which the framers of the interpellation hope will be adverse to the ministry, thus forcing its resignation. The procedure enables the opponents of a ministry to hold it to a strict accountability.

KEEPS THE MINISTERS ON THE "QUI VIVE."

Every ministry is from time to time put upon its mettle in this way. It must prepare to face a series of interpellations during the course of every session. Of course it will succeed in answering most of them to the satisfaction of a majority in the Chamber, but sooner or later, and perhaps quite unexpectedly, the ministers find themselves overthrown when the vote is taken. Of the 91 ministries that have served France since the foundation of the Third Republic the great majority have come to grief in this way. Hostile deputies lie awake nights thinking up ingenious interpellations which are bound to cause embarrassment no matter how the ministers try to answer them.

OBJECTIONABLE FEATURES OF THE FRENCH INTERPELLATION PROCEDURE

The interpellation has been a feature of French parliamentary procedure for a long time and it would now be difficult to abolish it. But most students of comparative government, and some French publicists as well, look upon the interpellation as an institution of dubious merit. In its actual operation it does not tend to stabilize the course of ministerial policy but to wreck the craft. Interpellations are not essential to the maintenance of ministerial responsibility, for England has had no difficulty in getting along

without any such procedure, and so have the British self-governing dominions. On the other hand the interpellation procedure in France has frequently resulted in the ousting of a ministry on some trivial issue where the general policy of the government was in no way involved.

THE INTERPELLATION IS NOT THE ONLY REASON FOR MINISTERIAL INSTABILITY IN FRANCE.

It is sometimes argued, and with a good deal of cogency, that the instability of French ministries is not mainly due to the interpellation procedure but results from the multiplicity of the party-groups in parliament. French cabinets are practically always coalitions, depending for their support on groups of deputies among whom there is no genuine cohesion. Any test of strength, no matter how applied, would disclose their weakness as compared with English ministries. In the British House of Commons an opposition member can at any time move the adjournment of a debate in order to discuss some alleged grievance. When the budget is under discussion he can move to reduce the salary of a minister. And if either of these motions should be adopted it would have exactly the same effect as an adverse vote upon an interpellation in France. Such motions are made from time to time in the House of Commons, but they are voted down. This is because the British ministry can count upon the votes when it needs them. In France the ministers have no such unified, dependable support. So it is not the interpellation procedure alone, but the decentralization of political parties that is chiefly responsible for shortening the average life of ministries in France.

THE CHAMBER IN ACTION.

Among the thousands of Americans who go to Paris, few ever think of taking a look at the Chamber of Deputies in session. This is true even of Americans who are actively interested in politics at home. Yet the Chamber is worth a visit, and admission to the galleries can be had for the asking. There is a fair chance of arriving in the midst of an exciting debate, and in any event the sittings of this body seldom bear much resemblance to a prayer meeting. The visitor will be surprised to see the deputies addressing themselves to the audience and not to the chair as is the practice in other countries. If he understands the language he will be exhilarated by the swift and often brilliant exchanges that pass between the tribune and the floor. And if, perchance, his visit happens to occur when the Chamber is deciding the outcome of an interpellation he will see a sight that is not soon forgotten. The excitement, the clamor, the gesticulations, the crowded galleries, the

thronged corridors, and all the rest of it—they constitute a spectacle that only Frenchmen can provide. Outside the Palais the bookmakers and gamblers are laying wagers on the outcome as though the whole proceeding were a horse race or a cock fight. Surveying it all, the visitor may wonder how a great nation manages to get its laws made in this way. The answer is that it doesn't. France does not depend upon her senators and deputies for the framing of statutes.

THE LAWMAKING PROCESS IN SUMMARY.

The laws of the French Republic are really framed by administrative experts under the direction of the ministers; they are revised and touched up by standing committees; the details are filled in by the council of state and promulgated by presidential decree. Both the Chamber and the Senate are lawmaking bodies in a generic sense only. Their prime function is deliberative—to reflect the desires and opinions of the people, in other words to keep the executive and administrative branches of the government responsive and responsible. Together they form the grand inquest of the Republic with the function of criticizing the powers that be, and displacing them whenever the occasion arises, as it frequently does.

GENERAL PROCEDURE. The *Règlement de la Chambre des Députés* and the *Règlement du Sénat*, that is, the printed manual of rules for the two chambers, are indispensable aids in the study of their procedure. The standard French treatise on parliamentary law and methods is Eugène Pierre, *Traité de droit politique, électoral et parlementaire* (5th edition, 2 vols., Paris, 1929), but mention may also be made of the *Précis élémentaire de législation financière* published in Paris in 1917 and of J. Onimus, *Questions et Interpellations* (Paris, 1906). Interesting comments on French parliamentary methods may be found in Sisley Huddleston, *France and the French* (2 vols., New York, 1925), W L. Middleton, *The French Political System* (New York, 1933), Laurence Jerrold, *France Today* (London, 1916), André Siegfried, *France: A Study in Nationality* (London, 1930), and Alexander Werth, *France in Ferment* (New York, 1934).

LEGISLATIVE COMMITTEES. The best and most comprehensive study is R. K. Gooch, *The French Parliamentary Committee System* (New York, 1935), but attention should also be called to Joseph Barthélemy, *Essai sur la travail parlementaire et le système des commissions* (Paris, 1934), and André J. L. Breton, *Les commissions et la réforme de la procédure parlementaire* (Paris, 1922).

BUDGETARY PROCEDURE. French budgetary practice is fully explained in René Stourm, *Le Budget* (Paris, 1913), which has been translated into English by Theodore Plazinski (New York, 1917). A. E. Buck, *The Budget*

in Governments Today (New York, 1934) gives a more general description of the procedure. Mention may also be made of E. Allix, *Traité élémentaire de science des finances et de législation financière française* (6th edition, Paris, 1931), Harvey Fisk, *French Public Finance* (New York, 1922), and R. M. Haig, *The Public Finances of Post-War France* (New York, 1929).

See also the references at the close of Chapters XXV and XXVI.

CHAPTER XXVIII

FRENCH POLITICAL PARTIES AND POLITICS

To keep united, the only way is to stay disunited.—*Jules Ferry.*

The first thing that the American student of French politics ought to do (if he can) is to banish all home-grown political notions from his mind. He should approach his study of the French party system as though he were a man from Mars, without any ideas as to why political parties exist, what they do, and how they do it. For the American and French party systems have nothing in common except a mutual desire to get control of the government. They are unlike in their organization, aims, and procedure. To make the confusion worse, the French use a political terminology which is quite like that with which we are familiar in America, but which usually means something different.

A WORD OF CAUTION.

In the United States a political party is a nation-wide, or state-wide, organization with a large and fairly stable membership. Each party has its own group of representatives in Congress or in the state legislature. Party organizations in the country and party-groups in the legislative body are definitely related. But in France this is not the case. Party organizations in the country and party-groups in parliament have in many cases no close relation at all. Members of a single party-group in the Chamber of Deputies may come from more than one of the party organizations; the names of the groups in the Senate are not the same as those of party-groups in the Chamber, and there are some important party organizations in the country which have no representation in parliament at all.

Both the party-groups in parliament and the party organizations outside are in constant flux, the former being the more volatile. Some of the nation-wide parties are relatively stable (the Radical Socialists and the Communists, for example), but in some cases they have national and regional organizations quite distinct from the parliamentary groups bearing the same name. In a word one should distinguish at the outset between French political parties and party

groupements in the French parliament. The latter are for the most part artificial; they are continually in process of being broken up and re-formed.

In 1937, according to the *Political Handbook of the World* for that year, there were thirteen party-groups in the Chamber of Deputies. They had memberships ranging from five to one hundred and forty-seven. In addition there were twenty-nine deputies who set themselves down as "non-inscrits," that is, belonging to no party-group at all. Foreign students of French politics have tried to account for the disintegration of both the regular parties and the parliamentary groups in France; but the reasons are neither few nor simple. In brief, however, the multiplicity seems to be caused by: *first*, the lack of continuity in French constitutional organization since political parties came into existence, *second*, the "negative individualism" of the French political temperament, *third*, certain features in the system of parliamentary procedure, and, *fourth*, the periodical injection into French politics of personal issues, not involving fundamental questions of public policy, which have tended to split the party-groups into fragments and produce new alignments.

THE MULTIPLICITY OF PARTY-GROUPS, AND THE REASONS FOR IT:

To begin with, it should be reiterated that in a political sense modern France is very modern. Government by political parties did not exist in France before the Revolution of 1789, nor did it make much real headway for almost a century after that date. During most of the nineteenth century the fundamental issue in French politics concerned the very nature of the state, whether it should be monarchical, republican, imperial, or something else. No matter what the form of government during these years there were large numbers of irreconcilables who wanted a republic when a monarch or emperor was on the throne, or who clamored for a monarchy during the brief republican interludes. Political parties, as Englishmen and Americans understand them, cannot exist and develop unless there is something approaching a consensus on the general nature of the commonwealth. And it is only during the past fifty years that the French, as a nation, have reconciled themselves to the republic as a permanent institution. Even yet, in fact, there is still a small group of extremists who would like to see a monarchical or even a dictatorial form of government restored in France, reactionaries who have not

1. THE LACK OF POLITICAL CONTINUITY.

yet reconciled themselves to the results of the Great Revolution.[1]

To grow strong and stabilized it is necessary for a political party to accept the existing régime. If its aim is to wreck the state, and not merely to change the government, it cannot become a party of "loyal opposition," as each of the great parties is forced to do from time to time in England and America. The various party-groups in France have accepted the Third Republic, as a permanent institution, since 1887 or thereabouts. The interval since that date has been too short for the development of deep-rooted political traditions.

In the second place the *morcellement* of political parties and parliamentary groups in the Third Republic is probably due in part to certain traits in the general temperament of the French people. National temperament, of course, is a compendious term that can be utilized to explain or excuse almost any eccentricity in government. Yet the individualism of the people is a well-recognized trait of the French national character. And the individualism of the Gallic race is negative in comparison with the constructive individualism of the Anglo-Saxon. The reasons for this difference make a long story, too long to be narrated even in outline here.[2] But it is a truism that the average Frenchman, despite his emotional exuberance on election day, is not really interested in politics and does not readily lend himself to party organization or discipline. This is particularly true of the small farmers who make up half the total population. The French peasant will work himself into paroxysms over some real or imaginary private grievance (such as a trespass on his little farm), while the townsman will induce apoplexy by the fervor of his interest in the question whether some side-street shall be named Rue Clemenceau or Place Poincaré. But great controversies on matters of public policy often leave them unperturbed. It takes something more than a commotion in the Folies-Bourbon (as he nicknames the Chamber) to ruffle the serene disregard of the average *bougnat* for happenings outside his own community. Principles and ideals he will discuss with vehemence, but their application to the problems of everyday politics—that is a matter which the French voter regards in most cases with quiet indifference.

2. THE FRENCH TEMPERAMENT.

[1] C. T. Muret, *French Royalist Doctrines since the Revolution* (New York, 1933).

[2] Those who are interested in the general subject will find it fully discussed in Ernest Barker, *National Character and the Factors in Its Formation* (New York, 1927).

So party divisions in France are not based upon inheritance and geography, as they have traditionally been in America, or on broad issues as in England. They rest in France on opposing conceptions of life. Frenchmen, as individuals, seem to be actuated in politics by an instinctive like or dislike of things which fit or do not fit into their own mental stereotypes. From generation to generation the rural voter learns very little that is new,—and he forgets nothing. "We don't like the English," said a French peasant to an American officer during the great crusade of 1917–1918,—"because they behaved very badly hereabouts during the Hundred Years' War"!

TOWN AND COUNTRY.

With the dweller in the large cities it is of course somewhat different. Politically he is not so indifferent as the *paysan*, but his negative individualism is equally pronounced. Hence he reacts against doing as other men do. He wants to be his own mentor in politics. Political independence is to him a self-evident virtue; by its exercise he demonstrates that he is as good as any other man. Thereby he proclaims his allegiance to the ideal of *égalité*. So he would rather vote for a leader than for a party, a policy, or a program. When a new issue arises he tries to fit it into a *grande politique* of his own.

The French Revolution recognized only the individual; it did not recognize classes as such. Fraternity was one of its three watchwords, in fact the climax of the three. This traditional spirit of revolutionary days still colors the national psychology; obviously it does not lend itself to a political system in which political parties are firmly organized and strictly disciplined. It has been said, and with some truth, that the French voter goes seeking for some political issue on which he may differ from his fellow citizens rather than for one on which he and others may unite.

3 THE SYSTEM OF PARLIAMENTARY PROCEDURE.

The crumbling of parliamentary groups in France has also been due, in part at least, to certain features of procedure, notably the plan of organizing the committees in parliament, the interpellation, and the practice of putting government measures in charge of reporters rather than of ministers. Of course it may be replied that these things are not the causes of disintegration but the results of it. Perhaps that is true. It is like trying to determine the cause-and-effect relation between crime and poverty. Each is a cause, and each is also a result of the other. Interpellations help to

keep the groups in flux; but if any single group could become strong enough to command a clear majority in the Chamber the interpellation procedure would be of very little consequence.

So with the practice of placing reporters instead of ministers in charge of government measures when such bills are being debated. This divides responsibility and weakens leadership. Ostensibly the reporter is leading the Chamber, but his leadership is for the moment only, and is confined to the measure in hand. It is by no means akin to that of a minister who takes the floor as the sponsor of a government bill in the House of Commons. The French *rapporteur* speaks for his committee, not for the party-group to which he belongs. Members of the latter may vote against him when the measure is put to a vote. And yet if everything else in French politics tended towards party solidarity, as is the case in England and America, this one feature of parliamentary procedure would not have a very serious effect.

THE SERIES OF POLITICAL SCANDALS

More important, as disorganizing factors in French party alignment, have been the periodic injection of personal or otherwise extraneous issues Nothing seems to stir the emotions of the French electorate like a political issue which revolves around some personality, especially if there be a touch of scandal attached to it. Such issues do not help political parties to keep their fences firm, and France has had more than her share of them. At least six such convulsions during the past fifty years or so have helped to turn existing party lines askew and compel regroupings to the detriment of stability and party discipline.

4. THE PERIODICAL INJECTION OF PERSONAL ISSUES.

The first was the Wilson scandal of 1886. A daughter of President Grévy married an expatriated Englishman, Daniel Wilson, and brought this son-in-law to live in the executive mansion. Sheltered under the same roof with Grévy, the Englishman was believed to exercise a sinister influence over the octogenarian chief of state. At any rate he was quite voluble in telling his intimates about what he could do in the way of getting presidential favors for the right people. It presently developed, moreover, that various applicants had paid good money to shady go-betweens in the expectation that they would be given rank in the Legion of Honor.

(a) THE WILSON SCANDAL (1886).

An investigation exonerated President Grévy from any share in the profits of this trafficking; he was merely the victim of a misplaced family confidence; but public sentiment could not now forgive his initial fault in having taken this miscreant from a nation of shopkeepers into the honored precincts of the Elysée. So the Paris cabarets rang with the frivolous refrain, "*Ah! Quel malheur d'avoir un gendre!*" and the old man had to go. Not without effort was he wrenched from the presidential chair, however, for he was obstinate and fond of the emoluments. At any rate the whole sordid episode was used by the monarchists and others of the extreme Right to discredit the Moderate Republicans who had chosen Grévy to the chief executive office and from whose ranks he had risen to his post of leadership. It broke down a party that was on the way to become as strong as the Liberals in England.

THE OUSTING OF GRÉVY.

Much more dangerous to the security of the Republic, as well as volcanic in its effect on party groupings, was the Boulanger agitation which began about 1885 and did not end until 1891. Boulanger was a general in the French army, by nature aggressive and unscrupulous, with a flair for publicity. Incidentally he was master of all the arts that demagogues know how to use, and although a flabby character and a coward (as later events proved) he managed to acquire an immense popularity.

(b) THE BOULANGER AGITATION (1885–1891)

Boulanger first leaped into the headlines as a jingo and militarist. His chief assets were a uniform, a cocked hat, a black horse, a blond beard, and a mouthful of promises; but his popularity caused him to be taken into the cabinet as minister of war (1886). Thereupon he startled the world by suggesting that France should actively prepare for a war of revenge against Germany. As "*Le général de la revanche*," he was at once glorified by his million admirers. Apart from the flagrant impropriety of his proposal, emanating as it did from a minister of war, there was the fact (obvious to all intelligent Frenchmen) that a single step in any such direction would have meant suicide for France. Germany would not have waited until France could make ready for a war of revenge.

THE GENERAL'S HISTORIC RISE.

In any event the Berlin authorities lost no time in branding Boulanger as a menace to the peace of Europe and virtually demanding his exclusion from the ministry. The French government

had no option but to accede, whereupon Boulanger was able to pose as a martyr to republican impotence. Extremists from both flanks quickly rallied to his support, for they were willing to see the Third Republic overthrown and did not much care who accomplished it. It was their plan to use him merely as a *démolisseur*, not to set him at the head of a new government. Boulanger also sought to gain support from the Church in France, and in some measure succeeded. Presently he found himself at the head of a strange political ménage comprising irreconcilables of both the Right and the Left—both ends against the center.

HIS POSE AS A MARTYR.

With this combination behind him Boulanger became, in 1888, an anti-ministerial candidate for election in several of the departments. (At this time elections to the Chamber of Deputies were conducted under the plan of *scrutin de liste*, or general ticket.) The ministry retaliated by removing him from the active list of the army, whereupon Boulanger proclaimed himself a revisionist and demanded that the constitution be overhauled. For the moment it looked as though he might accomplish what Hitler did in Germany, a generation later, and become dictator of France, for he managed to stampede the electorate in one department after another and get himself elected by large majorities. Whenever a vacancy occurred in the Chamber he would forthwith resign his seat and become a candidate, always with the same result. Early in 1889 he was triumphantly elected by the Department of the Seine, in which Paris is located, and then challenged the ministry to hold a general election.

HIS SUCCESS AT THE POLLS.

This victorious march of a would-be dictator greatly alarmed all the moderate party groups and they took drastic steps to deal with it. They abolished the plan of election-at-large and restored the district system, with a provision that no one might become a candidate in more than a single district. This put an end to the general's unbroken series of victories at the polls, but it would hardly have availed to crush his crusade had it not been for Boulanger's own indiscretions and errors of judgment. By saying and doing foolish things he began to lose his hold on the populace, and his star went into its declination as rapidly as it had risen. The ministry, taking heart at the turn of the tide, tried to hale him before the Senate for impeachment. But "*le brave général*" did not wait to face his accusers; he fled to Belgium

HIS COLLAPSE AND END

where he dealt with his own hand a final blow to the agitation by committing suicide in 1891. Nevertheless this sawdust Caesar gave the Republic a scare while it lasted. Incidentally his collapse, and the manner of it, discredited the extremists at both ends of the scale and divorced their *mesalliance*.

(c) THE PANAMA CANAL MUDDLE.

The third stormy petrel of French politics during the closing decades of the nineteenth century was Ferdinand de Lesseps, the promoter who planned and built the Suez Canal. Having finished this great waterway to the Orient, he sighed for a new world to conquer. So De Lesseps promoted a company to construct a sea-level canal across the isthmus of Panama. Then ensued an orgy of frenzied finance. Shares in the new company were eagerly bought by thousands of Frenchmen, but much of the money was wasted before any real progress in digging the canal had been accomplished. When rumors of this mismanagement began to be noised around, the officials of the company attempted to hush them up by subsidizing newspapers and bribing members of parliament. To no avail, however, for the whole enterprise went bankrupt, and although strenuous attempts were made to refinance it they proved abortive.

ITS EFFECT ON THE GOVERNMENT.

Thereupon the shareholders demanded an investigation and the government unwisely tried to conceal the true state of affairs, but a probe could not be avoided and in the end a sordid story of official corruption was laid bare. The evidence connecting senators and deputies with this corruption was not altogether conclusive, but innuendo made up for what was lacking in testimony, as is so often the case in French public life. At any rate various leading statesmen in both the Moderate Republican and the Radical groups found themselves under a cloud. Public confidence in the integrity of more than one party-group was badly shaken. Once again there was an opportunity for the extremists of the Right to strengthen themselves and they took full advantage of it.

(d) THE DREYFUS CASE (1894).

Even before the odor of this scandal had been blown away, one of even greater capacity to stir the emotions of Frenchmen began to loom on the horizon. This was the Dreyfus case which carried its echoes around the world during the closing years of the nineteenth century. Captain Alfred Dreyfus, an officer in the army, was put on trial and con-

victed by court-martial in 1894 for having sold French military secrets to Germany. Dreyfus was a Jew, born in Alsace, a member of the French general staff, but unpopular among his fellow officers. His conviction and sentence to exile on Devil's Island (off the north coast of South America) did not attract much attention at the moment, but presently rumors of gross injustice began to be circulated and eventually Émile Zola, the novelist, came forward with the definite charge that Dreyfus had been "framed" and railroaded to penal servitude in order that suspicion might be diverted from some non-Jewish officers who were the real culprits. This accusation, coming from so conspicuous a source, naturally created a great public commotion and before long the Dreyfus case, with its Semitic and anti-Semitic implications, was convulsing France from the Channel to the Mediterranean.

DREYFUSARDS AND ANTI-DREYFUSARDS.

There were charges and countercharges, investigations and interpellations, hearings and rehearings. The whole country discarded party lines and split itself into Dreyfusards and anti-Dreyfusards, the former including the Jews, the intelligentsia, the socialists, the radicals, and many moderate republicans. On the other side were most of the clergy, the army officers, the jingoes, the Jew-baiters of all varieties, the conservatives, and the monarchists. As the controversy passed through its various stages it toppled ministries, wrecked political ambitions by the score, and had something to do with causing one president to resign. In the end Dreyfus was retried by court-martial and again convicted, but the President of the Republic, on the advice of the ministry, granted him a pardon. Later the court of cassation annulled the verdict of the court-martial, whereupon Dreyfus was reinstated in the army, promoted, and given membership in the Legion of Honor.[1]

EFFECT OF THE CASE ON FRENCH POLITICS.

The outcome of the Dreyfus affair put the shoe on the other foot. It discredited the extremists of the Right. Likewise it welded the Republican Left and the Socialists into a bloc which remained intact for many years. Someone ought to write a book on these four horsemen of the French political arena. It is not right that biographical volumes should be restricted to men of success and achievement

[1] He served as a colonel in the French army during the World War and died a few years later. For a full account see Alfred and Pierre Dreyfus, *The Dreyfus Case* (New Haven, 1937).

alone. The troublers in Israel should have their day in court on the printed page, for their careers are often most instructive. Wilson, Boulanger, De Lesseps, and Dreyfus—a biography of these four would be a history of party politics in France during the last fifteen years of the nineteenth century.[1]

With the arrival of the twentieth century France appeared to be ready for a rest from political scandals. And a vacation from personalities was in fact enjoyed for a time while the country wrestled with the question of separating church and state, an issue which will be discussed a little later. Then, in 1914, came the World War, followed by the peace negotiations and reconstruction, with problems which absorbed the nation's entire energies. But with the return to something like normal conditions, the interest of the French electorate in political scandals was resumed, and this time the Stavisky case provided the material.

(e). THE STAVISKY CASE (1933).

Stavisky was a Russian by birth, but while he was still a small boy his family emigrated to France and settled in the Jewish quarter of Paris. He himself became a naturalized Frenchman, a Roman Catholic, and, what was not nearly so good, a rather shady financier with dealings mainly among the higher ranks of the underworld. The crowning achievement of Stavisky's meteoric career as a practitioner in the domain of frenzied finance was the Bayonne pawnshop affair. It should be explained, parenthetically, that in France the pawnshops are semiofficial institutions. At any rate Stavisky gained control of the establishment in Bayonne, issued worthless bonds to the amount of something like two hundred million francs, got a member of the ministry to suggest their purchase by large investors such as insurance companies, and succeeded in putting over the biggest swindle that France had known since Panama days. When the realities of the situation were disclosed Stavisky committed suicide (according to the official version), but millions of Frenchmen believed that he had been put out of the way because he might implicate too many persons in high places if brought to trial. So the affair was brought up for discussion in parliament where it created a turmoil and set Paris a-rioting. Then it upset the ministry (1933) and strengthened the popularity of the groups on the extreme

[1] Interesting chapters on Boulanger, Panama, and the "Dreyfus Revolution" are included in Jacques Bainville, *The French Republic, 1870–1935* (London, 1936).

Right which had been mainly instrumental in uncovering the frauds.[1]

THE CLERICAL ISSUE

Religion, when mixed with politics, is a disturbing factor in party alignments. The people of the United States had that fact brought home to them in the presidential campaign of 1928. But in France the issue of church and state is an age-old one: it goes back to the days of Guelfs and Ghibellines, Ultramontanes and Gallicans. During the nineteenth century it had come to the front at various times, splitting the country into clerical and anti-clerical camps, but not until about forty years ago did it become an issue of paramount importance in French politics.

THE CONFLICT OF CHURCH AND STATE.

Before the Revolution of 1789 the Catholic Church was the established church in France; no other was recognized by the government. And the established church was very rich, having acquired great areas of land from which handsome revenues were derived, but which paid virtually no taxes. One seventh of all the lands in the kingdom, it was said, had passed "into the dead hand" of the church during the old régime. Naturally the revolutionists looked upon this opulent institution as a fair target for their confiscatory decrees. It was rich; its clergy formed a privileged order; it was part of the old Bourbon dispensation. During the turmoils, therefore, the revolutionary authorities set upon the church and confiscated all its lands. Then they took the clergy from under the control of the Pope and made them subject to the civil government. Religion was compelled to knuckle before Revolution, as in Germany at the present day.

ITS ORIGIN AND EARLIEST STAGES.

When Napoleon Bonaparte assumed the reins of authority, however, he realized the necessity of restoring religion to its proper place in a well-organized state, and he was also desirous of establishing amicable relations with the Vatican. So he concluded with the Papacy an agreement known as the Concordat (1801). This treaty reëstablished the Catholic Church in France but could not give back the confiscated lands, because these had been divided up among thousands of peasantry. It was arranged, however, that the clergy should be recognized as public officials and paid by the government. The

THE CONCORDAT OF 1801.

[1] For an interesting account of the whole episode see Alexander Werth, *France in Ferment* (New York, 1934), chaps. iii–v.

priests were to be appointed by the bishops and the bishops appointed by the civil authorities but confirmed by the Pope. This Concordat of 1801 determined the relations of church and state in France for more than a hundred years.

SOME OF ITS EFFECTS.

But a close association of church and state has more defects than advantages, from both sides. Inasmuch as the bishops and priests were public officials the politicians became their paymasters. It was inevitable, therefore, that the church should be drawn into politics as a measure of self-protection. That, at any rate, is what happened. And it also happened that most of the clergy became allies of the monarchists and imperialists. They were against revolution, and to a certain extent against republicanism. So long as France remained an empire or a monarchy,—so long indeed as it seemed likely that the Third Republic might not be permanent, the anti-republican attitude of the clericals was not a serious matter. But when it became apparent that the Third Republic had come to stay—then the clergy had to effect some sort of reconciliation with it, which they did with great reluctance.

SOME POLITICAL ERRORS.

Unfortunately for themselves, the clericals had supported MacMahon in his stroke of 1877, thereby incurring the wrath of the radical Republicans.[1] Even more unfortunately, many of the bishops and priests swung into line behind Boulanger during the eighties, and most of them were ranged with the anti-Dreyfusards during the nineties. These misalliances greatly angered the Radicals who never ceased to repeat Gambetta's slogan: "*Le cléricalisme—voilà l'ennemi!*" The anti-clericals had two objectives in view, first, to liberate the schools from the influence of the clergy and thus to ensure that the children of France would not acquire any "unrepublican ideals"; second, to relieve the public budget from the burden of paying the salaries of the clergy.

THE RADICAL DRIVE AGAINST CLERICALISM (1900–1906).

At the beginning of the twentieth century the radical groups, as it happened, came into power, and they were not long in forcing their anti-clerical program to the front. Their first move was to order the enforcement of various laws relating to religious associations which had long been honored in the breach. "There are too many monks in French politics," said the prime minister as he ordered these laws to be rigidly enforced. This initial skirmish was

[1] See *above*, p. 422.

followed by the enactment of a stringent Associations Law in 1901. This provided that every religious association must obtain an official permit or be forthwith dissolved. Members of religious orders were also forbidden to give any form of secular instruction. These laws stirred up a hornet's nest, of course, but the ministry did not retreat.

As the conflict became more bitter the government broke off diplomatic relations with the Vatican (1904). Then it proceeded to abrogate the Concordat, in other words to cut the church and state asunder. A Law of Separation was drafted and enacted in 1905. This law proclaimed the gradual withdrawal of the government from all financial obligations to the church and set it free to manage its own affairs, including the appointment of bishops, without civil interference. The last-mentioned provision of the law would have been hailed with satisfaction by the clericals had it not been accompanied by the stipulation that the church would get no more money from the public treasury. The Separation Law also provided that all cathedrals, churches, and other ecclesiastical buildings should belong to the government, but that congregations might use them free of charge.

THE BREACH WITH ROME (1904) AND THE SEPARATION LAW (1905).

The general election of 1906 was fought on the issue of clerical privileges and the radical groups which had supported the Separation Law proved victorious at the polls. The same bloc of Leftist groups, with various shiftings, continued to dominate the Chamber down to the eve of the World War and disclosed no substantial weakening in its anticlerical attitude during that time. But when the great emergency came upon France in 1914 there was an immediate adjournment of all party animosities, and a coalition of all the leading party-groups was hastily formed under the name of the Sacred Union. This coalition was naturally less hostile to clericalism than the radical ministries had been and the same was even more true of the National bloc which succeeded this war coalition in 1919. While this National bloc remained in power, from 1919 to 1924, therefore, some progress in the restoration of cordial relations between the church and state was made. France and the Vatican resumed diplomatic relations in 1921,—by executive order, not by law. But the ministry, during these years, did not venture to repeal or modify the laws relating to the church, although it somewhat relaxed their enforcement.

OUTCOME OF THE CONFLICT.

France is a Catholic country. Americans may wonder, then, why the French people should countenance any form of warfare upon the ancient church. But those who try to understand the government's point of view will find it easy enough to do so. It is simply that the church should be kept out of politics and politics out of the church. In the United States the separation of church and state is taken as a matter of course. It is enjoined in the national constitution. In the sense that France is a Catholic country, the United States is a Protestant country; but let anyone propose a Concordat by which all the Protestant clergymen of the United States should be put on the public payroll, as school teachers are, and all the churches maintained by the state, as state universities are—we would think poorly of his political sophistication. The Catholic Church in America has become more virile and relatively more influential than it is in France because it has never been tied up with the civil government in any way.

THE WHOLE PROBLEM FROM AN AMERICAN POINT OF VIEW.

THE SOCIALIST GROUPS

Another significant development of the past fifty years in French politics has been the growth in the strength of the various socialist groups. There were some socialists in France as early as the Revolution of 1789 and during the first half of the nineteenth century their numbers seemed at times to be growing rapidly,—in 1848, for example, when they took a considerable share in establishing the Second Republic. But this republic proved to be a mere interlude, and during the Second Empire the socialists were hounded out of the land whenever they showed themselves. With the fall of Napoleon III, however, they once more came out into the open but were given part of the blame for the abortive attempt to establish communism in Paris immediately after the surrender of the city to the Germans in 1871. This made their cause unpopular in the rural parts of the country.

THE GROWTH OF SOCIALISM.

Socialism did not achieve its first notable success in France until it captured the trade unions during the late seventies. This was not an altogether unqualified triumph, however, inasmuch as the unions contained men of widely varying opinions. Some were not socialists at all; some were socialists of a very mild type; some were extremists. No unity among those who called themselves socialists seemed to be possible.

THE SPLIT IN ITS RANKS.

In due course a group calling itself Radical Socialist arose but its members were not socialists in any real sense of the term. In spite of its name this group is neither radical nor socialist, although it has frequently joined hands with the regular socialist groups in opposing the parties of the Right. In recent years they have been part of the Popular Front, but they have prevented this bloc from being genuinely a socialist combination.

THE MILLERAND EPISODE (1899).

Just at the turn of the century an important schism in the socialist ranks occurred. It resulted from a controversy as to whether a good socialist could enter a bourgeois ministry and continue to be a good socialist. The issue came to a crux in 1899 when Millerand, one of the prominent adherents of the party, accepted a post in the Waldeck-Rousseau cabinet, whereupon the regular socialist forces ranged themselves once more into two camps—those who favored his participation and those who did not. The latter carried the day and set up a rule forbidding their members to participate in ministries with non-socialist parties. They also agreed upon a set of regulations for the guidance of the party in selecting candidates. This faction now took the name of Unified Socialists and definitely allied themselves with the Second International.[1] But a considerable minority declined to accept this decision and ultimately formed still another group (1910) known as the Republican Socialists.

THE PRESENT SOCIALIST GROUPS.

During the past thirty years, accordingly, there have been several groups of socialist members in the French Chamber of Deputies. Together they form at the present time the largest element in that body. At the last general election the regular Socialist party captured nearly one fourth of the seats. Its chief leader, Léon Blum, became prime minister. The Radical Socialists took over one fifth of the seats, and one of the leaders of this group (Camille Chautemps) became prime minister when the Blum ministry resigned in 1937. The Communist party likewise gained a substantial representation of over seventy members in the Chamber, while the Republican Socialists secured about thirty. These groups, with some smaller ones, make up what is known as the Popular Front. Opposed to this bloc are various more conservative groups bearing such names as Republican

[1] For an explanation of the Second and Third Internationals see *below*, Chapter XLI.

Federation, Republicans of the Left, Independent Radicals, Democratic Alliance, and so on.

PARTY-GROUPS AS THEY STAND TODAY.

As at present constituted the Chamber contains thirteen recognizable party-groups, together with about thirty members who belong to no group at all. This does not mean, however, that there will be the same number a year hence, or that they will be known by similar names. Some of these party-groups are flowers that bloom in the spring and are gone before autumn comes. Both their personnel and their names are continually changing. In France the name of a political group is not a tradition but a slogan. It is coined to fit the moment. And whatever else may be said about the nomenclature of any French party-group except the Communists, one can be reasonably sure that it affords no certain clue to what attitude the group will take on any issue.

A BLURRED PICTURE.

Now the foregoing paragraphs may leave a blurred picture in the reader's mind; if so it is because no picture that is clear would be a true likeness. The names of the different groups, as has been said, are not always the same in the Chamber and in the Senate, nor do they in all cases correspond to the organized parties in the country at large. A French deputy may call himself a conservative and yet be a revolutionist—as all French monarchists are. A Frenchman who calls himself a supporter of the Democratic Left is quite likely to be strongly conservative when judged by all the usual tests, while an Independent Radical, more commonly than not, is merely a trimmer, without the courage to be a socialist on the one hand or a conservative on the other. Moreover, when a deputy is chosen at the polls as a member of one group he may quickly affiliate himself with another. Unless he is an orthodox Socialist or a Communist he is under no obligation to stay where he is put. "To what party-group do you now belong?" a deputy was asked by one of his voters a few months after the election. "Radical Socialist, the same as you elected me," he replied. "You don't say so," was the retort. "Then you are making no progress at all!"

PARTY ORGANIZATION

We speak of these various groups as "political parties" because the English language gives us no other convenient term to use. But they are something less than parties and something more than

factions, a sort of halfway between. They are precisely what the French call them—"groupements," in other words groups of elected representatives who bear some sort of label, who may or may not be supported by regular organizations among the voters, who may or may not be pledged to some definite program, who may or may not have a leader who leads them, who may or may not be subject to party discipline, and who may or may not have the same label six months hence. If anyone can frame a definition of a French party-group under such conditions he is welcome to the task.

CAN FRENCH POLITICAL PARTIES BE DEFINED?

Nevertheless it is true that some French party organizations bear a superficial resemblance to the organizations which we call political parties in the United States, for they have a nation-wide following; they have national committees, campaign funds, party platforms, and recognized leadership. They try to maintain discipline in their ranks. This is certainly true of the Radical Socialist party. But others have none, or almost none, of these party earmarks. Some of the parties which lean towards the Right and Right Center, for example, have no national organization at all; each deputy depends for his election upon his own efforts, and the members of his group are pledged to no definite program although in the Chamber they usually vote together. Some of the smaller groups are pledged to men rather than to programs and principles. When their leader shifts his group they follow him.

SOME OF THEM CAN.

Between the party-groups which are well organized in the country, and those which are not organized at all, there are all gradations of cohesion and discipline. In some cases the deputies are responsible to party organizations or federations in their own sections of the country (*départements*), but not to any control or direction in the country as a whole. In other cases they profess fidelity to some national body or program, but practice it only when it suits them. Strict partisan regularity, as we understand it in the United States, is not the rule in France. Most French deputies are not looked upon as insurgents when they fail to obey the crack of the party whip. In his election campaign the deputy makes all sorts of promises, and he keeps on making them after he is elected; but he feels under no binding obligation to join with a group that will carry them out. It reminds

NOT MANY PARTY REGULARS.

one of the way Frenchmen sing the rousing Marseillaise, chanting *Allons* and *Marchons* at the top of their lungs but never moving a step forward.

AN AMERICAN CONTRAST.

In the Congress of the United States one cannot vote regularly with the Democrats and nevertheless remain a member of the Republican party in good standing. In the British House of Commons a Conservative who regularly voted with Labor would be placing his political future in something more than jeopardy. But in the French Chamber of Deputies no stigma attaches to the man who changes his mind, his vote, his group, or his party—unless he is an orthodox Socialist or a Communist, in which case the offense would never be forgiven by his comrades. Party regularity is tightening up in France, however, for French politicians are learning (as Americans have long since learned) the value of a well-oiled machine on election day. The leaders of the middle parties are beginning to realize that socialism and communism cannot be effectively combated by the methods of guerrilla warfare. In a word the French political parties are slowly becoming somewhat Americanized.

LEADERS, CAUCUSES, AND ORGANS.

Each group in the Chamber of Deputies is supposed to have its leader or leaders. Each holds a caucus occasionally; but the decisions of the caucus do not bind the members. Each group (if it has fourteen members or more) is represented, in proportion to its strength, on all the regular standing committees of the Chamber.[1] Since the members of each group are seated closely together in the Chamber they usually develop bonds of personal friendship, although rivalries and jealousies also develop within the ranks, because every member has ambitions to become eligible for a place in the ministry. Each group of any importance has its own newspaper organ, and sometimes several of them. Thus the *Action Française* is Extreme Right, and royalist. The *Echo de Paris* is Conservative, and so is *Figaro*. The *Journal des Débats* tries to keep in the middle of the road, and so does *Intransigeant*. *L'Œuvre* is Radical Socialist, the *Petit Bleu* is Left Center, the *Ère Nouvelle* is Radical, while *Populaire* is the Socialist party organ *Humanité* is the Communist journal. A few French metropolitan newspapers are independent, or profess to be,—for example, the *Temps* and the *Journal*.

Having got himself elected to the Chamber, the deputy's next

[1] See *above*, p. 488.

job is to keep himself there. He must cultivate his own constituency by an unremitting attention to the interests of his supporters at home. For it will avail him nothing to keep the favor of his party leaders if he loses that of his own arrondissement. So he goes home every week-end, if he can, and works to keep his fences up. He counts upon the prefect for a benevolent neutrality at least, and for active support if he can get it. He labors to build up a personal machine, with key-men (usually job holders) in the vital spots. He must be much in evidence at local public gatherings and his name must get into the newspapers regularly. "When the papers stop talking about you, you're a dead one." The French deputy realizes it as well as the American congressman.

PRACTICAL POLITICS IN FRANCE.

No French statesman of the past twenty-five years has been the recognized leader of a majority in the Chamber of Deputies in the sense that Disraeli and Gladstone, or even Asquith and Baldwin, were leaders in the House of Commons. No one has dominated the Chamber as Thomas B. Reed and Joseph G. Cannon ruled the American House of Representatives in their day. This is because there can be no great leaders unless there are faithful followers. It is only among the regular Socialists and the Communists, strange to say, that the realities of leadership are strictly insisted upon in the French Chamber. Strange, because these are the groups whose political philosophy is most averse to the exalting of one man above the other.

MANY LITTLE LEADERS AND FEW GREAT ONES.

The various groups in the Palais Bourbon have no whips as at Westminster and at Washington, no party bosses as at Albany or Harrisburg, and no professional lobbyists to tell them how the farmers or the manufacturers or the labor organizations want them to vote. American political parties call themselves Republicans and Democrats; but their organization is neither republican in form nor democratic in fact. It is monarchical and oligarchic. A French group may call itself royalist, but it goes on the principle that all politicians are equal in the eyes of the law and the prophets. Nothing riles a Frenchman so much as to call him a henchman of somebody else. He wants it clearly understood that he is his own boss—outside his home, at any rate.

Still, if one looks back over the course of European history during the past sixty years the political parties in the French Republic have not given parliamentary government a bad record. France,

during these six decades, has maintained domestic tranquillity, developed a fine system of public education, attained a high and well-distributed economic prosperity, enlarged her colonial empire, fought a great war successfully, redeemed her lost provinces, reconstructed her shell-torn areas and made herself a dominating factor in the new League of Nations. "Did there ever appear on earth," asks Tocqueville, "another nation so fertile in contrasts, so extreme in its acts, more under the dominion of feeling and less ruled by principle . . . so fickle in its daily opinions and tastes that it becomes at last a mystery to itself . . . endowed with more heroism than virtue, more genius than common sense . . . the most dangerous nation of Europe, and the one that is surest to inspire admiration, hatred, terror, or pity—but never indifference?"

FRANCE AMONG THE NATIONS.

CONTEMPORARY PROBLEMS

The economic depression which began in 1929–1930 proved to be almost world-wide in its scope. In France, as in other countries, it resulted in a slackening of industrial production and a general fall in prices. Although peasant agriculture is the basis of the French economic structure, with millions of small farm-owners, this did not render the country immune from trouble, for agricultural prices went down with the rest. And the figures of unemployment rose to a huge level. To make matters worse the cost of living did not decline in any substantial measure, hence there were loud demands for remedial action from all sections of the country.

FRANCE AND THE GREAT DEPRESSION.

There were two ways in which this problem might be approached. The government could devalue the franc, or reduce its gold content, thus inflating prices. It might also take the country off the gold standard altogether, which is what the governments did in Great Britain and the United States. But the French people had been through one inflation, ten years before, and they didn't want to go through another. So the government chose the other alternative, deflation. This involved a drastic lowering of salaries, wages, interest rates, taxes, and rents, in order to reduce the costs of production. But deflation is equally unpopular, as the French authorities soon discovered. Lower wages meant less purchasing power in the country as a whole, with a smaller demand for goods, a further slackening in business, and in-

INFLATION OR DEFLATION?

creased unemployment. More money had to be spent for relief and as taxes could not be raised the government resorted to borrowing on a large scale. Great difficulty was experienced in the attempt to keep the country on the gold standard because investors sensed the danger and gold began to be shipped abroad for safety.

During the years 1932–1934 France had six different ministries. Each of them toppled within a few months before the rising tide of popular discontent. Impatience with the seeming helplessness of parliamentary government led to the formation of quasi-fascist organizations such as the *Croix de Feu*, which was composed of war veterans, and various smaller groups under leaders who sought to capitalize the general unrest. The movement developed rapidly, with all the characteristics of Hitlerism in its earlier stages, save that these French organizations did not have any outstanding leader to draw them together. The climax came during the early months of 1934, when their indignation over the Stavisky scandal led to demonstrations in Paris which the government suppressed with considerable bloodshed.

THE FASCIST DANGER.

Alarmed by this growing strength and aggressiveness of the various semi-fascist groups the Socialists, Communists, and other parties of the Left tried to get together. Such a combination now appeared to be possible because they had decided to give up their program of world revolution and coöperate with other groups against the fascist danger. After a good deal of negotiating and compromising a bloc known as the Popular Front was formed with a program which, although by no means revolutionary, called for a "new deal" in France. Combining their forces in the French parliament the groups of the Popular Front then passed legislation outlawing the more militant among the fascist organizations, those which were endeavoring to build up bodies of storm troops or armed partisans on the German and Italian model. Then, at the general election of May, 1936, they managed to capture a large majority in the Chamber of Deputies.

ORGANIZATION OF POPULAR FRONT.

This victory gave confidence, even over-confidence, to the masses of the French industrial workers (especially those organized in the *Confédération Générale du Travail*) and they demanded that a far-reaching series of industrial reforms be put into effect at once. The demands were accompanied by a great wave of strikes, mostly of the sit-down variety. The new

THE "NEW DEAL" IN FRANCE.

government hastened to settle these labor troubles by negotiations with the strikers, in the course of which most of their demands were granted. These included a general increase in wages and a recognition of the right of labor to bargain collectively. Then, when parliament came into session, a whole grist of new deal legislation was enacted. This established a forty-hour week, a fortnight's vacation with pay for every worker, and compulsory arbitration of labor disputes. Likewise it provided reduced fares on the railroads for all workers during their vacations and for the inauguration of a public works program as a means of alleviating unemployment. As these concessions imposed a considerable new burden on industry an arrangement was made whereby industrial establishments might obtain government credit with which to tide over the transition.

The Popular Front did not confine its solicitude to the industrial workers alone. It set out to help the French farmer also, for France is still a predominantly agricultural country. One of its first steps was to establish a national wheat office with the function of maintaining a remunerative price for grain by curbing speculation and controlling the profits of dealers. This office set up a standard price for wheat and arranged that excess supplies should be stored or exported. To prevent profiteering by millers and bakers, the local prices for flour and bread are fixed by the prefects and mayors. By these and other measures for the control of agricultural surpluses the plight of the French farmer has been somewhat ameliorated.

AGRICULTURAL RELIEF.

The remilitarization of the German Reich has alarmed all classes in France and the Popular Front has found itself under the necessity of greatly strengthening the defensive capacity of the Republic. But its leaders were determined that the expansion in armaments should not be a source of undue profit to the makers of munitions and military supplies. Accordingly a law was passed permitting the government to take over, in whole or in part, any concern engaged in the manufacture of guns, gas masks, tanks, war vessels, military airplanes, ammunition, or other such supplies. And it was further provided that when armament concerns were not taken over by the government they should be placed under strict control. In pursuance of this authority a number of establishments have been nationalized and are now managed as government enterprises. Compensation, of course, was given to the expropriated owners. Regulations have been promul-

THE ARMAMENT PROGRAM.

gated for those concerns which are not yet nationalized. In some cases, as for example in the airplane industry, the government has become a majority stockholder, leaving room for private investment. Difficulties, of course, have been encountered in determining the limits of the nationalizing program, for many establishments manufacture both commercial and military products. This is true of chemical industries, tractor plants, airplane factories, and shipbuilding concerns. To take over everything that is directly or indirectly engaged in the manufacture of armament, or in supplying the basic materials for armament, would involve government ownership on an almost unlimited scale.

THE FINANCIAL PROBLEM.

A new deal always costs huge sums of government money, and France has proved no exception to the general rule. The Popular Front inherited a difficult financial situation due to a long series of unbalanced budgets and an enormous public debt which absorbed about one fourth of the government's annual revenues. Then it found itself committed to expenditures on a greatly increased scale without the possibility of similarly increasing its revenues from taxation. The result was a larger deficit and heavier borrowing. Capital began to migrate from France to other countries in steadily larger volume and it became necessary to forbid the exportation of gold. Then a law was passed (October, 1936) which devalued the franc and set up an equalization fund to maintain it at the new ratio. Meanwhile, in order to facilitate its own handling of the country's public finances the government virtually took the Bank of France under control. This institution had been a close corporation managed by a relatively small group of large stockholders, yet it ranked as the greatest single factor in the financial life of the country. The Blum government in 1936 obtained from parliament a law which left the bank in private ownership but provided that its governor, vice governors, and a majority of its directors should be named by the public authorities, leaving the stockholders to elect only a minority of the board. Under this new arrangement the government controls the operations and the reserves of the bank. It can manipulate either to serve its own purposes.

But despite borrowings, devaluation, and bank control the French treasury was emptied and in the early summer of 1937 the Blum ministry went to parliament with a request for a blank check, in other words for authority to handle the financial crisis by decrees as

it saw fit. The Chamber of Deputies complied with this request after it had been assured that the unlimited decree-making powers would only be used to reduce expenses, increase taxes, prevent evasions, and inaugurate other financial reforms. But the Senate rejected the ministry's request by a large majority and after negotiations for a compromise proved fruitless the cabinet resigned. There was much talk of fighting the Senate to a finish, but such action would have involved a long conflict and meanwhile the government would have been powerless to deal with the critical situation.

AN EMPTY TREASURY—AND THEN WHAT?

So Blum resigned as prime minister and was succeeded by Chautemps with a somewhat reorganized cabinet in which the former prime minister was given a place. The new ministry, like its predecessor, represented the Popular Front. It asked parliament for large but not unlimited power to handle the situation by decrees, and this authority was granted with the Senate's concurrence. Under the guidance of a new finance minister the government thereupon set out to balance the ordinary budget by levying new taxes, raising postage rates, increasing fares on government railroads, and charging higher prices for tobacco products, which in France are a government monopoly. Great economies in expenditure were also effected, and instead of trying to support the franc in international exchange it was left to find its own level. Likewise the new ministry set out to win the confidence of French industry by giving it a breathing spell from reform.

THE CHAUTEMPS PROGRAM.

All this, of course, was something of a disappointment to the more radical wing of the Popular Front, but even radicals must accommodate themselves to the fact that if a government cannot make its budgets balance it must borrow, and it cannot keep borrowing unless those who have money can be persuaded or forced to lend it. In dictatorships they can be forced, but in democracies they have to be persuaded, and persuasion is not easy when investors have lost confidence in the government. The Chautemps ministry did not manage to restore this confidence. Within a few months it was forced out of office and Blum once more took the helm. But not for long, because he found the economic situation becoming steadily worse and once more (1938) went before parliament with a request for a free hand in reorganizing the nation's finances. The Chamber of Deputies agreed to his proposals, but the Senate rejected them, whereupon the ministry resigned and was replaced by a new cabinet

with Edouard Daladier at its head. This group was drawn from the Radical Socialists for the most part, but it also included a few members from parties somewhat farther to the Right. Whether it can keep itself in office for any length of time is doubtful in view of its tenuous hold on the Chamber of Deputies.

CAN FRENCH DEMOCRACY ENDURE?

There are those who believe that France cannot solve her national problems with her existing parliamentary scheme of government. Democracy in France, they say, is slowly dying. The parliamentary system and ministerial responsibility, it is claimed, are growing steadily more unpopular. Beset by Nazi and Fascist dictatorships, north and south, there is a fear that France may eventually be forced into a desperate attempt to solve her serious problems by some radical change in the structure of her government. The immense majority of the French people remain attached to the democratic ideal, but a nation will not long tolerate chaos in the name of democracy. Today France stands as the last great outpost of parliamentary government in Continental Europe. With her back to the wall, can she keep on saying to the foes of civil liberty, as she did to the invading Germans at Verdun, "They shall not pass"? That question may be answered within a very few years.

IS PARTY DECENTRALIZATION AN EVIL?

Meanwhile most Americans, when they discuss the strong and weak features of democratic government, assume that the two-party system is preferable to any other. They may be right, but it is by no means certain. A multiple-party system means divided responsibility and lawmaking by compromise—both of which many people look upon as things to be avoided. They prefer concentrated responsibility and lawmaking by a disciplined majority. But unified responsibility sometimes shades into presidential or ministerial dictatorship while lawmaking by the crack of the party whip is too often a synonym for political oppression. Two party-groups in a parliament or congress do not, and cannot, reflect all the differences of opinion that arise among the voters; it may require half a dozen party-groups to do it even fairly well.

LAWMAKING BY COMPROMISE.

Lawmaking and the determination of public policy under the multiple-party system must proceed by compromise; but it is yet to be demonstrated that lawmaking by compromise necessarily gives less satisfaction to the country as a whole. The first and best piece of legislation ever put upon the statute book of the United States, the federal constitution, was the outcome of a great many compromises—between north and

south, between big states and little ones, between federalists and anti-federalists, between seaboard and hinterland. The system of checks and balances, which this constitution established, ensures a certain amount of lawmaking by compromise even when a political party is in complete control. But France has no network of checks and balances, so she must endeavor to attain the same end by her multiple-party system.

The most systematic treatise on the subject of French political parties is Léon Jacques, *Les partis politiques sous la troisième république* (Paris, 1913). Smaller and more recent surveys, of real value, are F. Corcos, *Catéchisme des partis politiques* (Paris, 1928), and G. Bourgin, J. Carrère and A. Guérin, *Manuel des partis politiques en France* (Paris, 1928). Raymond L Buell's *Contemporary French Politics* (New York, 1920) contains an interesting discussion of party organization, aims, and problems, and there is an excellent hundred-page survey in Robert Valeur, "France" (see *above*, p. 416), pp. 456–556. Mention may also be made of the *Tableau des partis en France* by André Siegfried (Paris, 1930).

Recent books of varying value are Léon Blum, *Le réforme gouvernementale* (Paris, 1936), Alexander Werth, *France in Ferment* (New York, 1934), Ralph Fox, *France Faces the Future* (London, 1936), André Tardieu, *France in Danger* (London, 1935), Maurice Thorez, *France Today and the People's Front* (London, 1936), Carleton J. H. Hayes, *France: A Nation of Patriots* (New York, 1930), R. H. Soltau, *French Parties and Politics, 1871–1930* (London, 1930), and the same author's *French Political Thought in the Nineteenth Century* (New Haven, 1931). Current governmental developments are recorded in *L'année politique* and in the *Revue politique et Parlementaire*.

On the Boulanger episode see A. Mermeix, *Les coulisses du boulangisme* (Paris, 1890). The Panama scandal is elucidated in Quesnay de Beaurepaire, *Le Panama et la république* (Paris, 1899) and in G. de Belot, *La vérité sur le Panama* (Paris, 1889). The monumental work on the Dreyfus case is J. Reinach, *Histoire de l'affaire Dreyfus* (4 vols , Paris, 1924). For the opposing side of the case the best book is Dutrait-Crozon, *Précis de l'affaire Dreyfus*. There is also an English translation of the autobiographical account: Alfred Dreyfus, *Cinq années de ma vie* (Paris, 1901).

On the question of church and state a well-known volume is that of Paul Sabatier, *Disestablishment in France* (Paris, 1906). Antonin Debidour, *L'église catholique et l'état sous la troisième république, 1870–1906* (2 vols., Paris, 1906–1909) is anti-clerical. The other side is set forth in L. R. P. Lecanuet, *L'église de France sous la troisième république* (3 vols., Paris, 1930).

A concise and informing discussion of *The New Deal in France*, by John C. deWilde, is published by the Foreign Policy Association (Foreign Policy Reports, Vol. XL, No. 12, September 1, 1937).

CHAPTER XXIX

FRENCH LAW AND LAW COURTS

There is no better test of the excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen.—*Lord Bryce.*

Out of the chaos which followed the collapse of the Roman empire there arose and spread over most of Western Europe a great system of political and social relations known as feudalism. It was an institution based upon the tenure of land. The lord gave his vassals land and protection; the vassals gave him services in return. He, too, was the lawgiver within his domain and the source of all justice. This was the very essence of feudalism and its effects were far-reaching. The student of modern government is usually aware of the fact that feudalism rose in mediaeval Europe and ultimately fell; but he does not always realize that its influence continued long after the system itself had passed away.

THE INFLUENCE OF FEUDALISM ON LAW.

Anyone who compares the legal development of England and France from earliest times down to the beginning of the nineteenth century will be impressed by the striking contrast which marks the evolution of law and law courts in the two countries. These two nations are neighbors, with only a narrow strip of water between, but their respective legal backgrounds could not be more dissimilar if they were situated in different hemispheres. And the reason for this is not hard to explain. It is to be found in the fact that England never became so thoroughly feudalized as France. At an early date there developed in England a strong centralized monarchy which mastered feudalism, gave the country a unified legal system, and established the supremacy of the royal courts.

IN ENGLAND AND IN FRANCE.

Feudalism, as everyone knows, was a disintegrating force. It divided countries into principalities, dukedoms, baronies, and fiefs, each of which was virtually independent. Save for a shadowy allegiance to the king, each feudal duke or count or baron was supreme

within his own domain. Hence it was that every section of northern France developed its own distinct system of customary law, its own *coûtume*, as it was called. These in due course were put into written form and administered by the local courts. The *Coûtume de Paris* was the most notable among these bodies of localized law, but there were hundreds of others, and they differed greatly in character. The multiplicity of *coûtumes* was so great that, as Voltaire once said, a man who went across France changed laws as often as he changed horses.[1] It was not so in England. There, in the early days, bodies of local customs had begun to develop; but the centralizing power of the monarchy proved too strong and they were submerged by the rise of the common law, which was the king's law, common throughout the whole country and uniformly administered by the royal courts.

THE FRENCH "COÛTUMES" IN CONTRAST WITH THE ENGLISH SYSTEM OF COMMON LAW.

Down to the Revolution of 1789, accordingly, there was no system of common law in France. But this does not mean that there were no rules of law which applied uniformly throughout the whole country. Superimposed upon the *coûtumes* was a body of edicts, decrees, and ordinances issued by the king. As the French monarchy grew in strength during the sixteenth and seventeenth centuries it became the practice to issue elaborate ordinances on various subjects, and in the reign of Louis XIV (1662–1715) a long series of them appeared, the *grandes ordonnances* they were called. Some of these royal edicts were veritable law codes, dealing in a comprehensive way with such matters as commerce, wills, trusts, and judicial procedure; and they applied uniformly to the whole of France. Most of these great ordinances were issued on the authority of the king alone, for no elective parliament met in France from 1614 to the eve of the Revolution.[2] This whole body of royal legislation, however, covered only a small part of the entire field and hence did not serve to unify the legal system of the country.

THE FRENCH LEGAL SYSTEM BEFORE THE REVOLUTION.

[1] In the southern part of France, the *pays de droit écrit* as it was called, the principles of Roman law were more generally and uniformly applied, but even here they were somewhat modified by local custom.

[2] There was a requirement that every royal edict or decree must be registered by the Parliament of Paris before it could become valid. But this body was not a parliament in any real sense; its members were appointed by the king. And if they declined to register an ordinance (as they did on a few occasions), the king could come before the *parlement* and overrule the opposition by the use of a prerogative known as the *lit de justice*.

Very different, it may be repeated, was the course of development in England where the legal supremacy of the crown over the whole country was asserted by William the Conqueror and made good by his successors at a very early date. The kings sent their judges on circuit from county to county; these itinerant justices presided in the county courts and gradually established uniformity in the interpretation of both customs and laws. The Curia Regis, in its hearing of appeals, also provided a consolidating influence. Long before the close of the mediaeval period England was able to place her law and her courts on a national basis while France did not manage to do so for several centuries thereafter. To the French people this was an enormous handicap, for a common law is one of the greatest unifying forces known to human society, second only to a common language.

A CONTRAST WITH ENGLAND.

The leaders of the French Revolution were well aware of the weakness which this legal demoralization engendered. They knew that it constituted a barrier to the creation of a truly national sentiment, that it stood in the way of the *fraternité* which the Revolution was seeking to create. Not only this but they felt very keenly that the *coûtumes* were mediaeval in spirit, antiquated, out of tune with the legal requirements of a modern age. Revisions had been made from time to time, it is true; but these revisions had not changed the spirit of the laws. Revising a *coûtume* was like touching up the portrait of a mediaeval knight and calling him a modern aviator. So the revolutionists decided that these bodies of customary law must go.

THE SITUATION WHEN THE REVOLUTION CAME.

In keeping with this decision the Revolutionary Assembly proceeded to abolish the greater portion of the old jurisprudence. Various general statutes, applying to the whole of France, were enacted instead. Then it seemed desirable to consolidate these new statutes, together with what was left of the old law, into a series of codes, and the revolutionary government set its hand to this enterprise; but it was no small task and for a time very slow progress was made. This revolutionary government, moreover, had matters of much greater urgency to deal with during the closing years of the eighteenth century. Hence it was not until Napoleon came into power that the work of codifying the whole jurisprudence of France was speeded up and finished. The Corsican went at the

THE ABOLITION OF THE "COÛTUMES" AND THE PROMULGATION OF THE "CODE CIVIL."

project with characteristic energy, and completed it within a few years.

Napoleon was very proud of this exploit. During his exile at St. Helena he referred to it as the greatest achievement of his age and one that would profit France more than a score of brilliant victories. "My code alone," he said, "has done more good in France than the sum total of all the laws that preceded it." In this he was right, for the Code Napoléon has had an immense influence upon legal development in all parts of the world. It has extended its legal principles and doctrines to the uttermost part of the earth, to regions where the tricolor never flew. The present systems of civil law in Italy, Spain, Portugal, Belgium, and in nearly all the Latin-American states are based upon it. The civil codes of Germany, Japan, Greece, and many other countries have drawn upon it heavily. It has had a greater vogue and a wider influence than the common law of England. It has perpetuated and revivified much of what was best in the civil law of ancient Rome. "Its provisions," as Napoleon himself once boasted, "not only preach toleration, but organize it,—toleration the greatest privilege of man."[1]

THE FAR-REACHING INFLUENCE OF THE NAPOLEONIC CODIFICATION.

The emperor did not himself do the work, of course; but he selected the jurists and gave them their inspiration. It was his driving power that put the codes into effect. They are his most enduring monument. When you go to Paris and look upon the marble cenotaph where rest the bones of this astounding man, you will see emblazoned there the names of his great military victories—Marengo, Wagram, Austerlitz, Jena, Friedland, and the rest. But you will find no mention of the greatest service that he rendered to France and to the world. In history Themis has never been so glamorous as Mars.

THE CORSICAN'S MOST ENDURING ACHIEVEMENT.

The Code Civil (to use its modern republican designation) was only the first of a series. Within the next half-dozen years four other codes were compiled and promulgated. These dealt with civil procedure, criminal law, criminal procedure, and commerce. Before Napoleon relinquished his imperial throne he had established throughout the whole of France a single system of law and legal procedure. Revisions of this system have taken place at intervals, but the fundamentals remain

THE OTHER CODES.

[1] R. M. Johnston, *The Corsican* (Boston, 1910), p. 299.

unchanged.[1] The Napoleonic codes were so comprehensive that they left relatively little to be covered by subsequent legislation. In France, as a consequence, there has been no such outpouring of statutes as has taken place in England, in America, and in the British self-governing dominions. This, however, is not an unmixed blessing, inasmuch as the codifying of a legal system conduces to rigidity. It is sometimes said that the codes have tended to stereotype the legal system of France and to take from it that quality of quick responsiveness to new economic needs which every progressive legal system ought to have.[2]

This suggests reference to a distinctive feature of French law and legal interpretation. In Great Britain and in the United States the law is being constantly developed, expanded, and even altered by judicial decisions. Both these countries have built up great bodies of judge-made law. Although it is the theory of Anglo-American jurisprudence that the judges have no authority to change the law, but only to interpret and apply it, everybody knows that English and American courts do, in fact, make changes, often very considerable changes.

A DISTINCTIVE FEATURE OF MODERN FRENCH LEGAL DEVELOPMENT:

One judicial decision advances a little upon another, and so on year after year, until there exists a wide gulf between the law as it is and the law as it was. Simple words and phrases receive new shades of meaning, and ultimately acquire new meanings altogether. This gradual modification of the law by judicial decisions has been made possible in England and the United States by the traditional respect which the courts always render to precedent. The doctrine of *stare decisis*,—the doctrine that a court will always be guided by previous decisions unless there is a compelling reason for reversal—has resulted in giving judge-made law a definite drift and direction.

THE DOCTRINE OF "STARE DECISIS."

But in France there is no such doctrine. On the contrary it is definitely understood that no court is under any obligation to be guided by its own previous decisions or even by the decisions of a higher court Precedents may be cited in the French courts, and frequently are; but no great re-

DOES NOT EXIST IN FRANCE.

[1] In 1904, on the centenary of the Code Civil, there was a somewhat extensive revision.

[2] Some of the American states and the British dominions also have codes—civil codes, criminal codes, and codes of procedure; but they are not so comprehensive as those of France and their provisions are constantly being adjusted to new conditions by means of judicial interpretation.

liance is placed upon them, and the judges are free to disregard even the weightiest precedents if they feel so inclined. When a French tribunal gives a decision which directly contravenes some previous ruling, nobody says (as we do in America) that "the court has reversed itself." It has merely changed its mind or its attitude, in accordance with altered conditions, as every French court is expected to do. At the same time it is impossible for any court, in any country, to decide every case on its own individual merits, without some reference to what has already been adjudged in similar cases. The prestige of a judiciary demands that its decisions shall be reasonably consistent.

NEVERTHELESS PRECEDENTS ARE USUALLY FOLLOWED.

So, while the doctrine of *stare decisis* has never had any formal recognition in France, and while no great body of controlling decisions has been built up as in America, there is nevertheless a definite judicial consensus on many fundamental questions. In other words, while the courts are free to disregard precedent, they have found in the nature of things that it is easier and better to maintain a reasonable standard of consistency in their interpretations of the law. Side by side with the written provisions of the codes they are gradually building up, therefore, a small body of judge-made laws which fills the lacunae and clears the obscurities.[1]

ANOTHER DISTINCTIVE FEATURE:

NO PRACTICE OF DECLARING LAWS UNCONSTITUTIONAL.

There is another feature of the French judicial system which the American student will do well to note. France has a written constitution, embodied in a series of constitutional laws. And the French constitution, like the American, is ostensibly the supreme law of the land; hence any ordinary law which conflicts with its provisions is said to be unconstitutional and void. But no French court has the power to declare a statute unconstitutional and to annul it on that ground, no matter how repugnant to the constitution the statute may be. No such power is expressly given to the courts by the French constitution and it has not been acquired, as in the United States, by usage.

A CHANCE FOR CONTROVERSY.

What happens, then, if the French parliament passes a law which contravenes a constitutional provision? Suppose it should pass a statute providing that decrees of the president may be promulgated without the countersignature of a minister although the constitution expressly stipulates to the

[1] Raymond Poincaré, *How France is Governed* (New York, 1914), p. 241.

contrary? The question cannot be authoritatively answered because the two French chambers have never yet enacted a law in direct contravention of a constitutional requirement. It has been suggested that the presiding officers of the Senate or the Chamber would not allow an unconstitutional measure to be introduced, and it has likewise been asserted that the President of the Republic might refuse to promulgate such a law if it were passed, and thereby withhold it from going into force; but it is highly improbable that any president would assume such a responsibility. Certain it is, in any event, that no court would assume the onus of interfering.

This is because the constitutional laws of 1875 say nothing about the courts, how they shall be organized, or what their powers shall be. The whole matter is left within the jurisdiction of the French parliament, hence a conflict between the judiciary and the legislature in France could have only one outcome. The courts are created by law, and by law their powers could be curtailed. They might declare one law unconstitutional, perhaps, but parliament would see to it that they never did anything of the sort again. Through its lack of constitutional protection, therefore, the French judiciary does not possess the independence or the powers that have been acquired by the judiciary in the United States. It is not the habit of Frenchmen to look upon the judiciary as a separate branch of the government, distinct from the legislative and executive branches. They regard the courts as administrative agencies, subject to the same kind of control.

WHY JUDICIAL SUPREMACY CANNOT BE DEVELOPED IN FRANCE AS IN AMERICA.

Some other general contrasts between the French and American judicial systems remain to be noted. In France all the courts are localized; the judges sit at a fixed place and never go on circuit as is the practice to a considerable extent in both England and America. In France, moreover, every court except the very lowest is provided with a bench of judges; in no higher court does a single judge give decisions. Every decision of a French court (save in the very lowest courts) must be rendered by the concurrence of at least three judges. There is an old French proverb: *juge unique, juge inique*, which expresses the public sentiment on this matter; but it has no justification, as the history of English and American courts has shown. A single judge is no less careful, and no less fair, than a bench of judges. On the contrary he assumes the entire responsibility for it,

SOME OTHER CONTRASTS BETWEEN THE FRENCH AND AMERICAN JUDICIAL SYSTEMS.

whereas such responsibility is dissipated when decisions are rendered by a vote of three judges against two, or of five against four.

As a result of this full-bench system the total number of judges in France is very large—nearly six thousand in all.[1] From time to time it has been proposed to cut down the excessive number in France by having single judges sit in the courts of first instance, but the collegial tradition has always proved too strong. Attempts have also been made to reduce the number of courts, of which there are far too many, but here again there has been opposition from the regions immediately affected. The deputies agree with the idea in principle, but not in its application to their own constituencies. It is as difficult to abolish a superfluous court in France as to eliminate an obsolete land office or navy yard in the United States.

THE LARGE NUMBER OF JUDGES.

In England and in the United States the judges are recruited from the legal profession. An appointment to the bench is regarded as the recognition of a successful career at the bar In France this is not the case. Members of the French judiciary are regarded as the representatives of a separate profession, with no close relation to the active practice of the law. The young Frenchman, when he begins to study law, decides whether he wants to be a lawyer or a judge, and plans his studies accordingly. If he chooses a judicial career he does not hang out a sign and hustle for clients when he has finished his course. He goes at once into service as a subordinate court official, sometimes without pay. Then, if he displays ability, he may become a *procureur* (official prosecutor), or a substitute judge in a court of the first instance. In time, if he earns promotion, he will become a regular judge of this court, and eventually the presiding judge of it. From this position he may be named as a *conseiller* on one of the courts of appeal, and if he sufficiently distinguishes himself among his colleagues there he will ultimately attain the zenith of his aspirations by donning the red robe which is the insignia of the court of cassation.

HOW FRENCH JUDGES ARE CHOSEN.

In other words, the French judiciary is regarded as a branch of the civil service for which a special form of training is required. This is quite contrary to the tradition in the United States where any lawyer is deemed fit to be a judge if he can get himself appointed or

THE JUDICIARY A BRANCH OF THE CIVIL SERVICE.

[1] In the lower courts they are called *juges*, in the higher courts they are called *conseillers*.

elected. There are no elective judges in France. An elective judiciary was established during the Revolution but it proved a failure and Napoleon abolished it in 1804. No serious attempt to revive it has been made under the Third Republic. The French people, despite their faith in democratic ideals, realize that the effective administration of justice is something that calls for specialized skill and experience. All French judges are therefore appointed by the President of the Republic on recommendation of the minister of justice. Most of them hold office for life and cannot be removed except by consent of the court of cassation.[1]

THE DUAL SYSTEM OF LAW AND COURTS:

Most conspicuous of all differences between the French and American legal systems, however, is the separation which the former makes between ordinary law and administrative law, between ordinary courts and administrative courts. It is sometimes said that France has one system of law for the ordinary citizen and another for the public official; but this, as will be shown in the next chapter, is not a fair way of stating the matter. The French system of administrative law redounds to the benefit of the ordinary citizen and not to his disadvantage It affords the Frenchman a measure of redress against his government which the American citizen does not obtain. The remedies which the French citizen has against his government are speedier, cheaper, and in every way more satisfactory than those which Americans possess in relation to their national and state governments. This whole question is of sufficient importance to deserve full discussion later; meanwhile it is enough to emphasize the fact that France has two distinct sets of courts, known as regular courts and administrative courts, each with its own judges, jurisdiction, and procedure.

ORGANIZATION OF THE REGULAR COURTS

1. THE REGULAR COURTS:

The regular courts administer the civil and criminal law. The lowest among these courts in France, as in England, are the local courts presided over by the justices of the peace (*juges de paix*). There is one such court in every rural district and several in each of the large cities. This court has jurisdiction in civil controversies where the amount involved is small, and in criminal cases where the offense is a minor one. The proce-

[1] See *below*, p. 542.

dure is informal and inexpensive. The *juge de paix* spends most of his time straightening out misunderstandings, his main function being to prevent lawsuits, not to try them. In his day's routine he deals with neighborhood quarrels over land boundaries, trespass and minor damages to property, disputes between landlord and tenant, liens on small salaries, and accidents to workmen. It is not so much a knowledge of the law as a knowledge of human nature that the French justice of the peace needs in his work.

THE "JUGE DE PAIX."

Next come district courts, or courts of the first instance. There is at least one of these in every department and it is always provided with several judges, at least three and sometimes as many as fifteen. Where there are more than six judges the court may divide itself into sections, each sitting in different towns within the department. The judges sit together, one of them serving as presiding judge, and render their decisions by majority vote. No statement as to the number of dissenting judges is ever made. Each court is assisted by a public prosecutor (*procureur*) who conducts the cases as is done by the prosecuting attorney or district attorney in the United States.

2 COURTS OF THE FIRST INSTANCE

The courts of the first instance hear appeals from the decisions of the justices (where small sums are involved; otherwise the decision of the lower court is final), and have original jurisdiction in all civil controversies no matter how large the amount involved. They also have original jurisdiction in a limited range of criminal cases. But all their decisions in criminal cases, and in civil cases involving large amounts, may be appealed to the higher courts. The courts of the first instance do not use juries.

THEIR JURISDICTION.

Then there are courts of appeal, twenty-seven of them in all.[1] Each court of appeal is also made up of a bench of judges (*conseillers*) and its jurisdiction extends over a judicial province, each of which contains from one to seven of the French departments. The court of appeal at Paris, for example, has jurisdiction over the Department of the Seine and five other departments. These courts sit in sections, each section having at least five judges, one of whom serves as presiding judge of the section. There is a civil section, a criminal section, and an indictment section (*chambre d'accusation*) which performs the functions of a grand jury.

3. THE COURTS OF APPEAL.

Each section of the court of appeal is assisted by one or more pub-

[1] One for Algeria, one for Corsica, and twenty-five for France.

lic prosecutors known as *procureurs-généraux*, also by various assistant prosecutors, attorneys, bailiffs, and other court functionaries. In France all these *procureurs*, *avoués*, *huissiers*, and so on, are regarded as members of the judiciary. The regular judges are known as the *sitting* judiciary, while the others make up the *standing* judiciary. This is in truth a realistic way of differentiating them. No juries are used by the court of appeal in any of its sections. The work is confined almost entirely to the hearing of appeals from the courts below, more particularly to the hearing of arguments on points of law. In most instances the decisions of a court of appeal are final.

PUBLIC PROSECUTORS.

The civil procedure in these courts of appeal seems strange to an American lawyer. The case is prepared, both sides of it, by *avoués* or attorneys. They make out the complaints and replies, rebuttals and replications, for which they charge their clients a stiff fee, and which they serve on one another by means of pompous *huissiers* or uniformed bailiffs whose services are also expensive. The judge waits until the lawyers have finished this interchange of documents and then listens to oral argument on such points as are still in disagreement. He does not see the clients, for the clients do not come into court. They may be fictitious persons so far as the judges are concerned. Sometimes they are—French versions of John Doe *v.* Richard Roe. No oral evidence is presented in the French courts of appeal. It is all in the form of documents. When the arguments have been concluded by the attorneys the judges confer and reach a decision.

METHODS OF PLEADING.

Serious criminal cases are tried in the courts of assize. These courts of assize have no jurisdiction in civil controversies, they deal with criminal appeals only.[1] There is one such court for each of the eighty-nine departments in France. Rather curiously they do not form a separate rung in the ladder of regular courts but are specially organized four times a year or oftener. The presiding judge is named from one of the courts of appeal by the minister of justice; his two associate judges are drawn either from a court of appeal or from a court of first instance. This is the only French court which uses a jury, and it sits with a jury in practically all cases. Juries are never used in France for the trial of civil suits.

4. THE COURTS OF ASSIZE.

[1] Incidentally, however, they may deal with the claims of a civil party in a criminal case. See *below*, p. 548, footnote.

The trial jury in France (as in England and America) is composed of twelve persons chosen by lot from a panel of citizens, but its procedure is somewhat different from that with which Americans are familiar. For one thing, its decisions are reached by majority vote and do not require unanimity. But when the vote stands six to six, or seven to five for conviction, the three judges, if they are unanimous, may render a verdict of acquittal. Abortive jury trials, through failure to reach an agreement, are therefore very rare.

THE JURY SYSTEM IN FRANCE.

The jury system is not indigenous in France, but was transplanted from England. And like most transplanted institutions it does not seem to be giving satisfaction. Its critics are numerous and vehement. One authoritative French jurist has declared that in many cases the courts might as well "allow justice to depend upon a throw of the dice as upon the verdict of the jury." Composed exclusively of petty shopkeepers, he goes on to say, "it often shows extreme severity towards attacks on property and a surprising indulgence to personal assaults."[1] Others have stigmatized the French jury as a sacrifice of common sense to an Anglo-Saxon superstition, and one that merely works havoc with the orderly administration of justice. Too much weight, however, should not be given to such aspersions. There are many Americans who feel the same way about the jury system, yet its merits in the United States clearly outweigh its shortcomings. It is easier to detect flaws in the system of trial by jury than to suggest something better in its place.

DOES NOT FUNCTION WELL.

The supreme court of France, for all ordinary cases both civil and criminal, is the court of cassation.[2] Its jurisdiction covers the whole of France, this being designed to ensure uniformity in the interpretation of the laws. But it is not a supreme court of appeal in the usual sense, because it has nothing to do with the facts of a case; its function is merely the cassation or annulment of lower court decisions which have wrongly interpreted the law.

5. THE COURT OF CASSATION:

The court of cassation sits in Paris and has a bench of forty-nine judges, including a first president, three presidents of chambers, and forty-five councillors. In addition there is a *procureur-général* and several assistants. Like the courts of appeal this highest court does its work in sections or

ITS ORGANIZATION AND POWERS.

[1] Joseph Barthélemy, *The Government of France* (New York, 1924), p. 176.

[2] The name comes from the verb *casser*, to quash, overrule, or annul.

chambers. Two chambers deal with civil and one with criminal cases.[1] The court of cassation has no original jurisdiction; all cases come before it on appeal from some court below. It cannot change the verdict of a lower court; it must either confirm the decision or refer the case back for a new trial. But it does not, as in America, send the case back to the same court for retrial; the rehearing must be given to a different court of the same grade. Since appeals involving the same legal questions are being constantly brought before the court of cassation, this tribunal is gradually building up a body of case-law despite the fact that it is not bound by its previous decisions. It should be reiterated that although the court of cassation is the court of last resort in all ordinary civil and criminal cases, it has no power to declare any law unconstitutional.

ITS PRESTIGE AND PROCEDURE.

The prestige of this court is very great. A seat on its bench is the vaulting ambition of every judge and *procureur* in the lower courts of France. The procedure used in the court of cassation is quaint, having come down without much change from the great ordinances of Louis XIV. The Napoleonic code of procedure left it substantially untouched. The contending parties submit briefs in writing; then the actual pleading consists of short oral arguments on the principal issues by the chief attorneys for both sides. These legal points of disagreement are then studied by a single judge who submits his findings to the whole chamber, which may accept or modify these findings as it sees fit.

SPECIAL TRIBUNALS: (a) THE COURTS OF INDUSTRIAL ARBITRATION.

Mention ought to be made of three special tribunals which stand outside the hierarchy of regular courts but whose work is of considerable importance. The first of these are the courts of industrial arbitration (*conseils de prud'hommes*). These are semi-judicial bodies made up equally of employers and employees with a justice of the peace presiding. They settle, or try to settle, labor disputes—especially those connected with wages, conditions of work, and wrongful dismissals. Thus they afford a prompt and inexpensive means by which the worker can get redress if injustice has been done. An appeal may be taken to the regular civil tribunals in any case where the amount involved is above a certain sum.

[1] In the case of the civil sections, one section (*chambre de requêtes*) examines the appeal to determine whether it is worth consideration. If its decision is affirmative, the appeal then goes to the other civil section; otherwise it is thrown out. By this method frivolous appeals are discouraged.

In the second place there are the commerce courts (*tribunaux de commerce*) which decide controversies arising out of commercial transactions, including bankruptcy proceedings. They are established in all French cities of any considerable size. The judges are elected by the merchants of the municipality. In Paris there are about 47,000 persons qualified to participate in the election of these commercial judges. They relieve the regular courts from the task of handling a huge grist of trade disputes. Appeals from the decisions of the commerce courts go to the courts of appeal.

(b) THE COMMERCE COURTS.

Finally, there are special courts for the fixing of compensation when private property is taken for public use under the right of eminent domain. These courts are composed of a jury alone—sixteen citizens drawn for the purpose and known as a jury of expropriation. They report their findings to the civil court which promulgates the award. In the United States, when private property is taken for public use, the constitution requires that the deprived owner shall be given "just compensation." The amount of this compensation, in the event of disagreement, is fixed by the regular courts.

(c) COURTS OF EXPROPRIATION.

In all the regular courts (not including those mentioned in the three foregoing paragraphs) the judges are appointed on recommendation of the minister of justice, but the latter is not free to recommend whom he pleases. He must follow certain rules which have been laid down by presidential decree. As regards appointments to the lower courts the minister must make his selections from among those who have passed special examinations or who have had a certain amount of experience either as prosecutors or in some other official position. For appointments to the higher courts the recommendations must be made from among the judges of the lower courts in accordance with a table of promotions.[1] It is provided, however, that the minister may depart from the *tableau d'avancement* in certain cases.[2] This sys-

THE FRENCH JUDICIARY AS A CAREER.

[1] This does not apply to the *juges de paix* who are rarely promoted. Judges of the courts of appeal and of assize are promoted from the courts of the first instance; judges of the court of cassation are selected from the courts of appeal.

[2] There is a separate table of promotions for each higher court. It is prepared anew every year by the minister of justice with the help of a judicial commission and is based upon merit as well as seniority. The minister must fill at least three fourths of the annual vacancies from this list; for the remaining one fourth he may go outside.

tem of appointment and promotion has greatly diminished the activity of the politicians in relation to the French judiciary, but it has not yet eliminated this activity altogether.

Most judicial appointments in France are made without limit of time. In all the courts, except the lowest and the highest, the judges are presumed to hold office during good behavior or until they reach the age limit.[1] Any accusation of misconduct against a judge (save in the case of its own members) is heard by the court of cassation which may render a verdict of removal. But the court of cassation has itself no such legal protection; its members may be removed by the President of the Republic at any time. In practice removals do not take place without good reason.

TENURE OF THE JUDGES.

By law and by custom, therefore, security of judicial tenure is well established in France. But it is not guaranteed by the constitution as in the United States. There is nothing to prevent wholesale dismissals under the guise of a law for reorganizing the courts. Such purgings (*épurations*) of the judiciary have at times taken place, but not in recent years (the last occasion was in 1883), and public sentiment is now so adverse to the practice that nothing of the sort is likely to occur again, unless the royalists or the communists some day manage to get control of both chambers.

NO CONSTITUTIONAL GUARANTEE OF IT.

JUDICIAL PROCEDURE

The procedure in the regular courts of France differs greatly from that followed by the courts of Great Britain and the United States. To explain all the differences would lead one into a long and technical narrative, of no interest save to legal specialists. But the more outstanding contrasts may be made clear by outlining how a criminal case runs its course in the French tribunals. This is not to imply that in France all criminal cases are tried in exactly the same way. The procedure is not absolutely fixed and may be varied a little as the occasion demands. But what follows will serve as a fairly typical illustration.

A SURVEY OF CRIMINAL PROCEDURE IN FRANCE.

Let us suppose that a serious crime is committed and an arrest

[1] The *juges de paix* are not regarded as judges within the meaning of this provision. There are special rules, prescribed by a law of June 14, 1918, relating to their appointment and removal. Nor do the rules against irremovability apply to the administrative courts (see *below*, pp. 559–560).

made by the police. The prisoner is first taken before an examining officer known as a *juge d'instruction*. Despite his title, this functionary is not a judge at all but a preliminary inquisitor who makes no finding of innocence or guilt. He merely holds an inquiry during which he closely questions the accused person. This *enquête* is not a public hearing, but the accused is permitted to have his counsel present. Witnesses are summoned, and all phases of the case are gone into. Then the *juge d'instruction* puts a summary of the matter into writing, and if he finds that there is sufficient ground for holding the accused he refers the case to the nearest *chambre d'accusation* which is the indicting body in France, there being no grand jury system as in the United States.[1]

THE "ENQUÊTE" BEFORE THE "JUGE D'INSTRUCTION."

In any event the preliminary *enquête* is thorough and searching. It leaves no portion of the accused's life-history unrevealed. Complaint is often made that there is too much administering of the "third degree," too much grilling and browbeating of the accused in the endeavor to force a confession of guilt. On the other hand there is an obvious safeguard against such maltreatment of accused persons so long as the prisoner is entitled to have his counsel present at the inquiry.

ITS NATURE.

When the case comes before the chamber of accusation the latter does not hear any additional evidence but merely examines the record. It may then order the accused to be discharged, or it may frame an indictment (*acte d'accusation*) against him. The actual work of drawing this document is done by the prosecuting officers of the court. Unlike the indictments returned by an American grand jury, the *acte d'accusation* is not a carefully worded enumeration of the charges against the accused person, but a voluminous recital which may (and often does) include a vitriolic tirade against him, his general character, his past misdeeds, and even the bad reputations of his relatives. It sounds like a prosecuting attorney's concluding address to an American jury in a criminal trial.

THE INDICTMENT.

Yet no one should conclude from this procedure that innocent persons run a greater risk of indictment in France than in the United States. Quite the contrary. In the United States the power to indict rests ostensibly with the grand jury, a body of laymen chosen by lot, but they are quite sus-

AN AMERICAN COMPARISON.

[1] It will be recalled that the *chambre d'accusation* (or, to give its full title, the *chambre des mises en accusation*) is one of the sections of a court of appeal.

ceptible to the influence of the district or state's attorney. Sometimes they virtually do what he tells them to do, and he, being an elective official, is not always immune from political pressure. Hence it frequently happens that grand juries are used by district attorneys for the promotion of their own political ambitions. In France the power to indict rests with a chamber of at least five judges, who are appointed by the chief of state and are irremovable except for good cause. All five judges must sign the indictment. These preliminaries, moreover, are pushed through more promptly in France than in this country. The accused must be brought before a *juge d'instruction* within twenty-four hours, and the chamber of accusation does its part within the next fortnight.

THE TRIAL. SELECTION OF THE JURY.

After his indictment the accused is brought to trial in a court of assize. Three judges sit on the bench in this court and the jury panel consists of thirty-six citizens whose names are drawn from an urn one by one. The prosecution and the defense may challenge any juror, with or without cause, until there are no more names in the urn than there are jurors to be selected. Thereupon no further challenges are permitted. When a long trial is anticipated, it is the practice to select, in addition to the twelve regular jurors, one or two extra jurymen who sit with the others and are available for service in case a regular juror is taken ill. As a rule it does not take long to impanel a jury in France, never more than a few hours. In America, as everyone knows, it may take several days, and sometimes more than a week. The American jury panel, moreover, often contains a hundred names, and when it is exhausted a new panel may be summoned.

THE JUDGE'S INTERROGATORY.

When the French jury has been chosen, the presiding judge explains the accusation but does not ask the prisoner to plead. Nor does the prosecution begin the trial in American fashion by giving a review of what it expects to prove. Instead, the presiding judge begins his *interrogatoire*, which is an examination and cross-examination of the accused. This may continue for several hours. Meanwhile the associate judges, the public prosecutor, and the counsel for the defense sit by in silence.

ITS NATURE.

If the presiding judge is a skilful questioner this arrangement provides a quick and effective way of bringing out the essential facts. But many of the French judges are neither skilful nor unemotional, hence the interrogatory sometimes develops into a rather undignified disputation between the prisoner and the

bench. This phase of judicial procedure has been vigorously criticized in recent years and there is a widespread demand that it be abolished. Police officers complain that when a judge grills an accused person too severely during his interrogatory the latter gets the jury's sympathy to such a degree that he is sometimes acquitted in the face of the strongest evidence.

After the presiding judge has finished his attempt to get the facts from the prisoner, the witnesses are called. Usually the witnesses for the prosecution are called first, then those for the civil party [1] (if there is one), and finally those for the defense. This is the order laid down in the code of criminal procedure; but it is sometimes varied and the witnesses are called in irregular order, so that the jury may not know which side they are testifying for.

PRESENTATION OF THE EVIDENCE.

The examination of the witnesses is conducted in a way quite different from that to which we are accustomed in the United States. Each witness, on being sworn, is instructed to tell all he knows and most of them obey this instruction all too literally. The code expressly provides that a witness must not be interrupted, but the court of cassation has ruled that if he rambles too far from the case the presiding judge may call him to order. In a French court witnesses are *heard*, not *questioned*. So everything goes as evidence at a French assize—hearsay, rumors, opinion, suspicion, animosity, invective, anything that a witness chooses to pour forth. He may tell what he saw, what somebody else saw, what he heard, or what somebody else heard somebody say he saw. Accordingly there are no long wrangles between the attorneys as to whether certain evidence is admissible or not. Anything is admissible if the presiding judge cares to listen to it, for the code provides that he may admit "whatever in his opinion will conduce to the ascertainment of the truth."

EXAMINATION OF WITNESSES.

Then, when the witness has had his say (without interruption) the presiding judge may question him. This he usually proceeds to do

[1] The term "civil party" requires a word of explanation. In France anyone who has been injured in person or in property as the result of a crime may enter the case as a *civil party*. For example, a truck driven by a drunken driver collides with a taxicab and kills a passenger therein. The truck driver is indicted and the state prosecutes. These are the two parties to the criminal side of the case. But the owner of the demolished taxicab may enter as a *civil party*, claiming damages. In the United States he would have to enter a separate civil suit which would be tried independently.

without first giving the lawyers a chance. When the judge has finished with the witness he must permit the public prosecutor to ask questions directly; but the counsel for the defense, and for the civil party if there is one, are never allowed to examine or to cross-examine in this way. They must ask their questions through the presiding judge, and the latter may decline to put any question that he deems irrelevant. Needless to say this arrangement greatly abbreviates the time taken in the examination of witnesses by counsel. Jurors are also allowed to ask questions, but they rarely do so. Nor is it usual for the two associate judges to question the witnesses, although they have that privilege.

THE CROSS-EXAMINATION.

When the witnesses have all testified, the public prosecutor delivers his address to the court and calls for a verdict of conviction. The counsel for the civil party and for the defense follow him in the order named. The prosecutor may then speak in rebuttal; if so, the counsel for the defense must be given the final word. The code expressly requires this, and it naturally gives the accused an advantage. As a rule the concluding addresses are not lengthy. The presiding judge does not "charge the jury" as in America; he does not sum up the case and call attention to the real points at issue. Nor does he instruct the jurors that they must bring in a simple verdict of guilty or not guilty. On the contrary he submits to the jurymen a list of questions which they are to answer. Was the accused present when the crime was committed? Has his alibi been proved? Was the assault or homicide committed in self-defense? And so on. One of the questions he always asks the jurymen is whether, in the event of their finding the defendant culpable, there were any extenuating circumstances. Sometimes the list of questions is long and complicated, and for this reason the answers which the jurors give are occasionally inconsistent with one another.

THE ADDRESSES OF COUNSEL.

SUBMISSION OF QUESTIONS TO THE JURY.

The jury retires from the court room and frames its answers by majority vote, a secret ballot being taken on each question. When any matter requiring the advice of the presiding judge arises it is not the practice (as in America) to march the jury back into the court room where the judge gives his explanation in public. In a French assize court the presiding judge goes to the jury room, accompanied by the public prosecutor and the counsel for the accused. Not infrequently he is summoned for the purpose of telling the jurors what penalty the court is likely to

REACHING THE VERDICT.

impose in case the answers are adverse to the defendant. This shows that French jurors have not caught the spirit of the jury system. They desire to do more than serve as an agency for the determination of the facts. The code of criminal procedure in France stipulates that a jury has nothing to do with penalties; but French jurymen often insist upon influencing penalties in a roundabout way. They do not like to place anyone in jeopardy without a prior assurance that the punishment will fit the crime.

FUNCTIONS OF THE JUDGES.

On the basis of the jury's answers the three judges announce the verdict and impose the sentence. In case of disagreement among themselves the three judges decide by majority vote. In general they must act in accord with the jury's answers; but (as has been mentioned) if the jury votes six to six or seven to five on any question, the three judges are free to frame a verdict of acquittal (but not a verdict of conviction), provided they are themselves unanimous. The code of criminal procedure also stipulates that a lenient sentence must be imposed whenever the jurymen report that they have found extenuating circumstances. French juries are notoriously partial to defendants. They are inclined to deal leniently with offenses of a political character, crimes committed during labor troubles, and most of the *passionnel* offenses. This leniency, however, is more evident in Paris and the other large cities than in the rural districts.

APPEALS.

From the verdict and sentence at the assizes an appeal may be taken on any issue of law to the court of cassation. This court, under ordinary circumstances, has no power to set aside the verdict; it can merely order a new trial and this rehearing takes place in some court of assize other than the one in which the original trial was conducted. In certain exceptional cases, however, the court of cassation may set aside the verdict of the assize without ordering a new trial.[1]

MERITS OF FRENCH CRIMINAL PROCEDURE.

Thus a criminal trial in a French court is an investigation, not a contest. It is not a battle between two opposing platoons of learned counsel. The rule that questions must be asked through the mouth of the presiding judge has had the effect of discouraging frivolous inquiries on the part of the defendant's attorneys. The practice of giving the presiding judge full discretion as to the range of admissible evidence

[1] For example, it did this in one case where a defendant had been convicted of murder and it subsequently appeared that the supposed victim was still alive.

serves to eliminate most of the long wrangles and protests and "exceptions" which take place in the criminal courts of the United States. The requirement of a majority instead of unanimity in reaching a jury's decision on any point has the advantage of avoiding deadlocks. Furthermore, there is a good deal to be said for the French plan of submitting to the jury a series of definite questions as contrasted with the American practice of insisting upon a categorical verdict, for it gives the jurymen something specific to work upon. In America we say that juries determine questions of fact alone; but what we actually require them to do is to fix guilt or innocence, which is by no means the same thing.

SOME OBVIOUS DEFECTS.

On the other hand there are some features of French criminal procedure which are wholly out of consonance with Anglo-Saxon legal traditions and would not be tolerated by public opinion in the United States or in England. A prisoner may be required to give evidence against himself. A witness is not permitted to refrain from answering any question on the ground that his answer may be self-incriminating. A prisoner cannot demand to be confronted by the witness against him. Written evidence may be received and accepted against an accused person without giving him an opportunity to cross-examine the authors of such evidence. The custom of admitting hearsay is one that ought not to be tolerated in any judicial system, nor should the practice of letting the jury ask the judge about the probable penalty.

CIVIL PROCEDURE.

The procedure in civil cases is necessarily different from all this because juries are not used to such controversies, nor is there a public prosecutor. Much of the evidence is submitted in writing. The *avoués* or lawyers on each side present their arguments to the judges who sit *en banc*, and the latter give judgment by majority vote. Civil trials move more rapidly in France than in the United States. Less heed is paid to technicalities. The right of appeal is more restricted. Yet the French judicial system has not found much favor among English or American jurists, which is partly because so few of them understand it.

A volume in the Modern Legal Philosophy Series entitled *Modern French Legal Philosophy* by A. Fouillée and others (New York, 1916) gives the student a good idea of the French legal system in general. A more elaborate study is included in Jean Brissaud, *History of French Private Law* (London, 1912). Mention should likewise be made of J. Parker, *Some Aspects of French L*

(New York, 1928), Sir Maurice S. Amos and F. P. Walton, *Introduction to French Law* (Oxford, 1935), and R. C. K. Ensor, *Courts and Judges in France, Germany and England* (Oxford, 1933). *The American Law Review* (Vol. XLVI, *passim*) contains an interesting comparison of French and American judicial methods. Developments of the legal system in France may be followed in the *Revue générale du droit*. There is a full bibliography in the *Guide to the Law and Legal Literature of France* published by the Library of Congress (Washington, 1931).

CHAPTER XXX

ADMINISTRATIVE JURISPRUDENCE

The French system of administrative law, and the very principles on which it rests, are quite unknown to English and American judges and lawyers.—*Albert Venn Dicey.*

In addition to the legal system which has just been described, France has another body of law and a separate set of courts for administering it. This branch of jurisprudence is known as administrative law (*droit administratif*) and the tribunals which deal with it are called administrative courts. The ordinary laws and the regular courts are concerned with the administration of justice as between man and man, while administrative law is concerned with the adjudication of rights as between the citizen and the government.

A SPECIAL BRANCH OF JURISPRUDENCE.

How did this distinction arise and what is the basis on which it rests? Well, to begin with, it harks back to the ancient legal maxim that "the king can do no wrong." This principle, or something akin to it, is still recognized in all countries,—France, Great Britain, and America alike. The sovereign is the source of law; being the source of law he is above the law; hence he cannot wrong his subjects and is not liable to be sued by them. This doctrine was succinctly stated by Chief Justice Roger B. Taney of the United States Supreme Court in one of his decisions as follows:

THE BASIS OF ADMINISTRATIVE LAW.

"It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege and permit itself to be made a defendant in a suit by individuals."[1]

Now while this principle is a time-honored one, it continues to be recognized today because it embodies a sound maxim of public

[1] Beers *v.* Arkansas, 20 Howard, 527 (1857).

THE JUSTIFICATION FOR IT.

policy. To follow a different rule would be dangerous. The public service would be hindered, and the public safety menaced if the sovereign authority could be enjoined from action by any citizen at any time. Neither the United States, therefore, nor any state of the Union, can be sued by an individual without its own consent.

THE THEORY IS NOT RIGIDLY APPLIED.

Yet the fact remains that the nation and the states must exercise their sovereign authority through human agencies—through public officials who are elected or appointed to do the work of governing. And these officials, being human, will at times make mistakes, display negligence, exceed their authority, act arbitrarily, and do injury to citizens or their property. A strict adherence to the principle that "the king can do no wrong" would lead to frequent and grave injustice. It would mean that the citizen must suffer wrong without redress. For this reason all sovereign states do, in fact, assume a varying amount of legal liability and permit themselves or their public officials to be sued under certain prescribed conditions.

HOW CAN THE CITIZEN BE BEST PROTECTED AGAINST ARBITRARY ACTS OF GOVERNMENT?

Then the question arises: How can this legal liability be safely assumed by the government? Should citizens be permitted to sue the state (or its officials acting under its authority) in the regular courts, or should special courts be provided for this purpose? Should the suit be brought under the general laws of the land, or in accordance with special rules established for controversies of this character?

THE ANGLO-SAXON ANSWER TO THAT QUESTION.

England and America have answered these questions in one way; France and other Continental European countries have answered them differently. Their answers, in both cases, go back to the fundamentals of their respective legal systems. The common law, upon which the jurisprudence of England and America rests, has always been intolerant of special privilege—especially on the part of those who are the agents of the government. It places upon the public official, be he governor, mayor, policeman, or inspector, the burden of proof that all his actions are fully warranted by law. No employee of the government, in England or the United States, enjoys immunity from the jurisdiction of the regular courts by mere reason of the fact that he performs a public service or wears a uniform.

But the Roman law, upon which Continental European juris-

prudence is largely based, came at the matter from a different angle. It regarded the state as an end in itself, and the individual as only a means to the perfection of the great body politic.[1] Hence it always stood ready to sacrifice the interest of the individual if the well-being of the state so demanded. *Salus populi est suprema lex.* From this it naturally followed that those who served the state in an official capacity were entitled to special consideration.[2] In other words they should be subject to a special body of law and amenable only to a special system of courts.

THE ANSWER GIVEN BY ROMAN LAW.

In England or in America, if an individual feels aggrieved at the action of a public officer he betakes himself to the ordinary courts for a warrant of arrest, or writ of mandamus, or an injunction, or whatever the appropriate remedy may be. He may ask for an injunction to prevent the paving of a street, the awarding of a contract, or the levying of a tax. He may get a writ of mandate ordering the election board to put his name on the voters' list or directing the building commissioner to issue him a permit. If his property is taken for public use, and he cannot get just compensation any other way, he goes right into the ordinary courts with his claim against the public authorities. There his claim will be adjudicated by a jury of his fellow citizens. All this is in conformity with the Anglo-Saxon legal principle that all officials save the very highest (and with certain exceptions which will be presently noted) are subject to the ordinary laws of the land. The highest officials, in turn, are subject to impeachment.

OFFICIAL LIABILITY IN ENGLAND AND IN AMERICA.

EQUALITY BEFORE THE LAW.

[1] This concept, it may be noted, has been revived in an extreme form by the Fascist government of Italy today. See *below*, Chapter XXXVIII.

[2] Joseph Barthélemy, in his *Gouvernement de la France* (Paris, 1919) argues that the system of administrative law was largely a spontaneous result of the French Revolution. The revolutionary authorities, he says, had to make attacks upon property and persons; the judges of the regular courts tried to protect the citizen; whereupon the government fulminated its prohibitions against them. They were forbidden to interfere with administrative acts. "Thus originated," he says, "the unfortunate principle of separating the administrative from the judicial authorities."

But the separation antedates the great upheaval of 1789. It was a logical outcome of two features which characterized the old régime in France, namely, the weakness of the courts and the overpowering strength of a centralized administration. Writing of the French judicial situation before 1789 Alexis de Tocqueville says that "in no other country were extraordinary courts more extensively employed." If France had possessed a system of common law, as in England, with regular courts strongly entrenched, it is not probable that the system of administrative law and courts would ever have come into being.

Both in England and in the United States, however, a public official is permitted to show that the wrong was not wilful, but occurred in the reasonable exercise of discretion given by law, in which case he is not held liable. And it should also be mentioned that there are, in the United States, certain special courts and commissions (like the court of claims at Washington) which exist for the purpose of adjudicating claims brought by private individuals against the government.[1] But neither in England nor in the United States do the rules relating to suits against the state or its public officials form a separate branch of jurisprudence. Nor do the special courts and commissions make up a system of administrative tribunals distinct from the regular judiciary. The court of claims at Washington and the court of customs appeal are integral parts of the American judicial system.

HENCE NO DUAL SYSTEM OF COURTS.

But in France, and in other countries of Continental Europe, all public officials, of whatever rank, are given a special status at law. For acts performed under color of their official duties they are not amenable to the ordinary laws of the land nor may they be brought before the regular courts. If an individual believes himself to have been wronged by any official's bad judgment or arbitrary action he is entitled to seek redress, but he must seek it from special tribunals which are maintained for this purpose and which apply a special set of administrative rules.

THE ATTITUDE OF CONTINENTAL EUROPEAN JURISPRUDENCE.

It should be made clear, however, that this immunity of public officials from the jurisdiction of the regular courts does not extend to anything done by them in a personal or non-official capacity. It does not even extend to acts performed in an official capacity if the injury results from the personal fault or personal negligence of the public officer. If, for example, a policeman makes an arrest in the course of his duty and in accordance with his instructions he cannot be sued in the ordinary courts no matter how wrongful the arrest may be; but if he makes an arrest without color of right and in disregard of his instructions he may be dealt with like any private individual who lays himself open to a civil suit for assault.

A WORD OF CAUTION ON THIS POINT.

[1] As has been mentioned in a previous chapter, moreover, there has recently been a notable growth of administrative jurisprudence in the United States. *Above*, p. 113.

This division of jurisdiction between the regular and the administrative courts in France has existed for more than a century and is regarded as essential to the proper functioning of the government. No intelligent Frenchman would now suggest its abolition. At first glance the division seems to give the public officials a privileged position, and hence to be undemocratic. But a moment's reflection will bring to mind the fact that even in democratic America we accord to hundreds of public officials special privileges in the eyes of the law.

IS THE SPECIAL PRIVILEGE OF THE PUBLIC OFFICIAL UNDEMOCRATIC?

To take a single illustration: the Constitution of the United States provides that members of Congress shall "in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session . . . and for any speech or debate in either House they shall not be questioned in any other place." The state constitutions give a similar immunity to members of the state legislatures. In other words they create a highly privileged class. If a congressman or a state legislator utters a slander on the floor of his legislative chamber he cannot be brought before the ordinary courts and penalized; he can only be disciplined, if at all, by the House itself. But if you or I, plain citizens, were to utter the selfsame words we would promptly be dealt with as common malefactors.

AN ILLUSTRATION.

"Ah, yes!" someone may reply, "these legislators are given a privileged status, but it is because their work could not be properly carried on if the legislators were subject to arrest during the legislative session on charges trumped up to embarrass them. Nor could there be general freedom of debate in the legislative halls if our lawmakers were responsible to any outside authority for the accuracy of their statements on the floor." All of which is quite true. The immunity of legislators is essential to their independence and to the proper functioning of the government.

And why should not the administrative officers of the government be given a like privilege? Is not their independence equally desirable? We speak of legislation and administration as coördinate functions in government, why then should the one be accorded a protection which is not given to the other? The French system of administrative law and administrative tribunals is based upon the principle that all public officials, and not legislators alone, ought to be given a reasona-

AND A QUERY SUGGESTED BY IT.

ble degree of immunity from the control of the ordinary laws.

Administrative law in France may therefore be defined as a system of jurisprudence which, on the one hand, relieves public officials from amenability to the ordinary courts and, on the other hand, sets up a special jurisdiction to hold them accountable. It is not embodied in a code, like the civil law. Some of the rules have been established by the issue of decrees, but in large part they have been accumulated by the decisions of the administrative courts, especially by the decisions of the council of state.[1] In this respect it somewhat resembles the common law which has been slowly built up in the regular courts by one decision after another.

ADMINISTRATIVE LAW IS CASE-LAW.

The French system of administrative law, built up in this way, covers a surprisingly wide range. It deals not only with the liability of the state and its subordinate divisions for injuries done to private individuals or their property, but with the rules relating to the validity of administrative decrees, the methods of granting redress when public officials exceed their legal authority (*recours pour excès du pouvoir*), the awarding of damages to private individuals for injuries which result from faults of the public service, the distinction between official and personal acts on the part of public officers, and many kindred matters.

ITS WIDE RANGE.

The whole system is well-knit together and liberal in its attitude toward the individual. Frenchmen do not look upon it as a barrier to the assertion of their personal rights. On the contrary they regard it as a palladium of their liberties, a protection against arbitrary governmental action. They are right in so regarding it, for it gives them a protection which otherwise they would not have. "It can now be said without possibility of contradiction that there is no other country in which the rights of private individuals are so well protected against the arbitrariness, the abuses, and the illegal conduct of the administrative authorities, and where people are so sure of receiving reparation for injuries sustained on account of such conduct."[2]

THE ATTITUDE OF THE FRENCH PEOPLE TOWARDS IT.

[1] Maurice Hauriou, *La jurisprudence administrative de 1892 à 1929* (3 vols., Paris, 1931).

[2] James W. Garner, "French Administrative Law," in the *Yale Law Journal*, Vol. XXXIII (April, 1924), p 599.

THE ADMINISTRATIVE COURTS

The principal administrative courts in France are the regional councils and the council of state. The former are a new creation and replace the old prefectoral councils, of which there was one in each of the eighty-nine *départements* of France. Under the new arrangement there are twenty-two regional councils, each serving from two to seven departments. In addition, the Department of the Seine, because of its large population, has a council of its own. Each regional council consists of a president and four councillors, all of whom are appointed by the national government on recommendation of the minister of the interior.

THE ADMINISTRATIVE COURTS:

1. THE REGIONAL COUNCILS.

In general, the regional councils hear complaints made by individuals against the actions of administrative officials. For example, they deal with controversies concerning tax assessments and most of the matters which come before them are of this nature. Other questions over which they have jurisdiction are those relating to public works (especially highways) and the conduct of local elections. Complaints by the thousand come before the councils for adjudication every year.

THEIR JURISDICTION AND PROCEDURE.

In France a distinction is made between *cassation* and *appeal*. Higher courts may be asked to quash (*casser*) actions of the public authorities or to reverse decisions of the lower courts. The council of state has a wide original jurisdiction; likewise it has powers of cassation in some cases and appellate authority in others. Appeals from the regional councils come regularly to it, or, more accurately, to that branch of the council of state which acts as a superior administrative court. Appeals are frequent, and they often result in a reversal of the lower decisions. The council of state is a large body, made up of two elements, political and non-political. Controversies concerning matters of administrative law, however, are heard and determined by a section of the council which consists of the thirty-nine non-political members, or *conseillers en service ordinaire* (see *above*, p. 455). These councillors are men of high legal attainment and do their work in masterful fashion. On the roll of *conseillers* one may find the names of many eminent jurists

2. THE COUNCIL OF STATE.

The council of state, in fact, occupies a place in the public esteem

and confidence of the French which is higher than that which the Supreme Court enjoys among the people of the United States. This is because its decisions have consistently guarded the rights and interests of the private citizen, however humble, against encroachment by the public authorities. It has deemed no cause too trivial for its attention provided some right of the individual appears to have been infringed. France has no bill of rights in her constitution, but the council of state has made good this deficiency by constituting itself a defender of the citizen against the abuse of governmental authority.

ITS HIGH PLACE AND PRESTIGE.

In fact it grants redress to French citizens which no American could obtain from the regular courts of his own country. Time and again it has held that the individual who suffers loss through the negligence of the police is entitled to compensation from the public treasury. It has ruled that persons injured through the collapse of a building owned by the government (and used for purely public purposes) must be compensated. In a word it holds that the state must pay for whatever damage it officers cause, through their official malfeasance or negligence, just as any private employer must make good the damage done by his agents within the scope of their employment.

VALUE OF ITS WORK.

Those who are familiar with the principles of public liability, as applied in the regular courts of the United States, need not be told that no such generosity exists in this country. An American city, under the rules of common law, is not liable for injuries caused to the property of its citizens by the negligence of policemen, firemen, or health officers. You can sue the policeman in the regular courts (for all the good that it will usually do you), but the courts will not award you damages against the city which employs him.[1] In the United States we take refuge behind the legal fiction that the "city is the agent of the state, and a sovereign state can do no wrong." The French method of dealing with such matters would seem to be fairer to the individual whose property has been injured. For after all it is better to sue in a special court, under special rules of law, and get redress than to have the more democratic privilege of taking your grievance before the regular courts where you get nothing

FRENCH AND AMERICAN METHODS OF REDRESS TO THE CITIZEN COMPARED.

There is no way in which acts of the public authorities in France

[1] In a few states, however, the liability of the city for damages done through the negligence of its firemen has been established by statute.

can escape the surveillance of the council of state if any citizen chooses to file a complaint. And this he may do with very little trouble and expense to himself. Formalities and fees are at a minimum. All the aggrieved individual need do is to present a petition on a stamped form, the cost of which is small, and even this is reimbursed if he wins his case. So anybody who has a grievance relating to any act of the public authorities can have it investigated by one of the many agents whom the council employs for the purpose.

SIMPLICITY OF THE COUNCIL'S PROCEDURE.

Of course this unwonted hospitality has its disadvantages. It gives the *Conseil d'État* an enormous number of grievances to investigate, and its calendar sometimes becomes badly congested. Special efforts have been made to expedite business, but it seems to be only a matter of time until the multiplicity of complaints will compel some change in the present arrangements, either by enlarging the council or by placing some limitation upon the ease with which grievances may be laid before it.

AN OFFSETTING DEFECT OF THIS SIMPLICITY.

It has been mentioned that no court in France has power to declare laws unconstitutional.[1] But this does not apply to ordinances and decrees—even when they are issued as supplementary to the provisions of a law. Such decrees may be annulled, no matter what their nature, or how lofty the personage issuing them. And it has been pointed out that a large portion of what we call "lawmaking authority" is exercised in France by the issue of these ordinances and administrative decrees. The council of state may also annul the action of any subordinate lawmaking body, such as a general council or a municipal council, if it finds such action to be outside the scope of their authority. National laws alone are exempt.

THE ANNULMENT OF DECREES.

When the council of state invalidates a decree or ordinance it does not ordinarily award damages to anyone who has suffered injury by reason of the attempted *excès du pouvoir*, but its action permits the injured person to bring an action for damages and obtain an award. In the United States no redress can be had from the courts in such cases. If an American city council, for example, enacts an ordinance which later proves to be beyond the scope of its charter powers, the courts will invalidate the

EFFECTS OF AN ANNULMENT.

[1] For a comparison of France and the United States in this respect see A. Blondel, *Le contrôle juridictionnel de la constitutionalité des lois* (Paris, 1928).

ordinance; but they will not hold the city liable for any damages that may have been done to private property in the meantime. So, here again, the French citizen is better off by reason of his special system of administrative law.

It has been said that the council of state can annul any decree by whomsoever issued. But there are certain actions of the president, taken on the advice of his ministers, which are not held to be decrees in this sense—*actes de gouvernement*, they are called, to distinguish them from ordinary presidential decrees or *règlements d'administration*. The former are deemed to be political in character, the latter administrative; but the exact line of demarcation between the two is not always clear. A presidential decree setting forth the methods of taking a census would obviously be an administrative act and hence subject to invalidation; but a decree appointing a new prime minister would be a political act and hence not open to review. The tendency of the council of state has been to broaden the category of administrative decrees until, at present, almost all the actions of the president are held to be included.

A LIMITATION ON THE COUNCIL'S POWER.

The council of state may invalidate decrees and ordinances on a variety of grounds. The most common among these is the annulment for *excès de pouvoir*, or, as we commonly express it, for being ultra vires (i.e., beyond the legal authority) of the official or council issuing it. Decrees and ordinances may also be voided for what the French administrative courts call a misuse of power (*détournement de pouvoir*). In such cases the authority of the official to issue the decree is not questioned, but the manner of his exercising the authority is attacked.[1] Annulment may also take place for irregularity in the form of the decree, but such invalidations are now uncommon because important ordinances and decrees are sent to the council of state for scrutiny as to their form before they are promulgated.

THE VARIOUS GROUNDS FOR ANNULMENT.

France is a republic with a highly centralized administration. Everything, as will be shown in the next chapter, heads up into the form of a pyramid. If her public officials were as free from judicial

[1] For example, where the President of the Republic dissolved a municipal council, on the advice of the minister of the interior, ostensibly because it was irregularly elected but in reality because it had quarreled with the prefect. The municipal code clearly empowers the president to issue a decree of dissolution, so that there was no *excès de pouvoir;* but there was a misuse of power because the dissolution appeared to have been ordered for an arbitrary reason.

control as they are in England and America there would undoubtedly be a great deal of arbitrary action. The system of administrative law and administrative courts is intended to serve as a counterpoise to this centralization.. Something of the sort is bound to develop in any country if the government extends the scope of its functions too widely and accumulates too many responsibilities. Wider functions necessitate the employment of more officials, and the subordinate officials in this vast army of civil functionaries keep getting farther and farther away from the seat of power.

WHY FRANCE NEEDS HER SYSTEM OF ADMINISTRATIVE LAW AND COURTS.

In the United States we have had a striking illustration of this during the past few years, since the national government assumed the chief responsibility for bringing the country out of an economic depression and giving it a new deal. Thousands upon thousands of new governmental officers have been employed to do this work; they have been given large discretionary powers; many of them function at long distances from the national capital; and in many cases they have not scrupled to set at naught the rights of the citizen as guaranteed to him by the Constitution of the United States. They have, in many instances, exceeded their powers and misused their authority —often to serve political ends. The regular courts of the United States have endeavored to protect individuals and corporations against this deprivation of their liberties and property without due process of law, and to some extent they have succeeded; but the outcome of their success has been a demand from officialdom for more control over the highest of these courts. In France the government may some day seek to "reform" the council of state, so that it will be less effective in its protection of civil liberties, but that step does not yet appear to be in sight.

DOES AMERICA NEED SOMETHING OF THE SORT ALSO?

With two sets of courts operating in the French Republic there must be at times a conflict of jurisdiction. In America there is one Supreme Court which has the last word in controversies both ordinary and administrative. In France there are two—the court of cassation which is the tribunal of last resort in all ordinary cases (both civil and criminal), and the council of state which is supreme in all administrative controversies. Neither of these two courts is superior to the other; each is supreme within its own sphere.

CONFLICTS OF JURISDICTION IN FRANCE.

What happens, then, when these two supreme tribunals disagree?

To settle such disagreements there is a court of conflicts which is now composed of nineteen members, namely, a president, three judges delegated by the court of cassation, three by the council of state, and twelve other persons chosen by the foregoing seven. If the two supreme courts, regular and administrative, cannot agree as to which shall have jurisdiction in any case the matter goes to this arbitral court for jurisdiction. But they do not disagree very often, as is proved by the fact that the court of conflicts does not have more than a half-dozen cases to handle each year.

THE COURT OF CONFLICTS.

Standard works on this subject are Honoré Berthélemy, *Traité élémentaire de droit administratif* (12th edition, Paris, 1930), Maurice Hauriou, *Précis de droit administratif et de droit public* (11th edition, Paris, 1927), and Gaston Jèze, *Les principes généraux du droit administratif* (3 vols., Paris, 1925–1930). The best-known brief manual is the *Petit précis Dalloz de droit administratif* (Paris, 1926). A book of considerable interest is Raphael Alibert, *Le contrôle jurisdictionnel de l'administration au moyen du recours pour excès de pouvoir* (Paris, 1926). See also the volumes by Paul Duez on *La responsabilité de la puissance publique* (Paris, 1927) and by Jean Appleton entitled *Traité élémentaire du contentieux administratif* (Paris, 1927). A full bibliography is included in the *Guide to the Law and Legal Literature of France* published by the Library of Congress in 1931 (pp. 210–221).

Mention should be made of Stratis Andréadès, *Le contentieux administratif des états modernes* (Paris, 1934), John Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass., 1927), William A. Robson, *Justice and Administrative Law* (London, 1928), and Ernst Freund, *Administrative Powers over Persons and Property* (Chicago, 1928), as well as the classic chapter on administrative law in A. V. Dicey's *Law of the Constitution* which took a position on the subject which is now regarded as untenable. Léon Duguit, *Law in the Modern State* (New York, 1919) is also worth attention.

For brief but illuminating surveys the reader may be referred to the articles on Administrative Law and Administrative Courts in the *Encyclopaedia of the Social Sciences*.

CHAPTER XXXI

LOCAL GOVERNMENT

Local institutions constitute the strength of free nations. A nation may establish a system of free government, but without municipal institutions it cannot have the spirit of liberty.—*Alexis de Tocqueville.*

THE TENACITY OF LOCAL INSTITUTIONS.

It is a commonplace of political science that governments develop greater stability in their lower than in their upper compartments. When revolutions occur, they usually begin at the top and proceed to transform the national government. They may also modify government in the middle, that is, in the states or provinces, districts and cities. But rarely do they have much effect upon government at the bottom—in rural hamlets, villages, and towns.

SOME ILLUSTRATIONS OF THIS.

Those who desire illustrations of this phenomenon in history will find plenty of them. The English civil war, for example, although it momentarily changed England from a monarchy to a republic, made no changes in the government of the English boroughs or parishes. The American Revolution did not change the government of the New England town or the Virginia county. It takes a tremendous overturn, like the French Revolution of 1789, or the Russian Revolution of 1917, to carry the process of reorganization down into the areas of local administration. Local institutions have a superior tenacity because they are usually the product of a long evolution in which they have been moulded to the needs of the people and become a part of the common life.

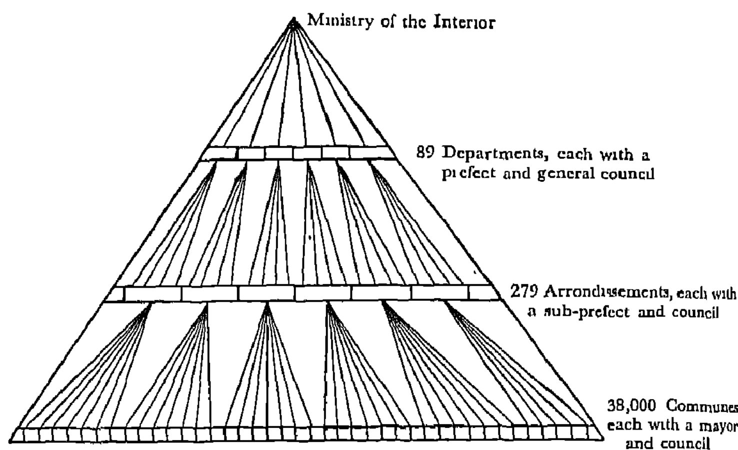
STABILITY OF LOCAL INSTITUTIONS IN FRANCE.

In France the structure of the national government has been changed many times during the past hundred and fifty years. Bourbon absolutism, First Republic, Directory, Consulate, First Empire, Restoration, Orleans Monarchy, Second Republic, Second Empire, and Third Republic—they have all functioned within this century and a half of time. But in no case did these national changes since the close of the Revolution alter the system of local government. The organization of the French department, arrondissement, and

commune remains today, in all essentials, just as the First Emperor left it. There have been many alterations in matters of detail, of course, and as a system of local administration it is much more democratic than it was at the outset. But in broad and all-pervading characteristics there has been no change at all. Surely a scheme of local government which has withstood so many shocks must have a great deal of merit and vitality.

GENERAL MERITS OF THE FRENCH SYSTEM.

Unquestionably it has both merit and vitality. It is peculiarly suited to the needs of a country in which the national government desires to retain close control over the local authorities. Centralization is the essence of this system, centralization raised to a superlative degree. All authority converges inward and upward. It can be charted in the form of a perfect pyramid.



NO LOCAL HOME RULE IN FRANCE.

This perfect convergence of supervision means that in France there is no recognition of the principle that every city and county has a right to conduct its own affairs in its own way. Municipal home rule has no place in French political philosophy. France is a centralized republic as respects all branches of its government. There is no division of powers between the nation and its parts. There are no concurrent spheres of governmental authority. The French Republic is not a federation of eighty-nine departments; it is a unitary state which has been mapped off into these artificial districts for the more convenient performance of governmental functions. The departments, in their

turn, have been subdivided into arrondissements, but the divisions and the subdivisions are mere creatures of the nation; they have no inherent powers. The minister of the interior at Paris presses a button—the prefects, subprefects, and mayors do the rest. All the wires run to Paris.

INFLUENCE OF THE FRENCH LOCAL GOVERNMENT SYSTEM IN OTHER COUNTRIES.

England, during the nineteenth century, exercised a great influence upon the development of *national* institutions throughout the world. Every national government from Japan to Belgium paid homage to the English example. But France, to an almost equal degree, has demonstrated her leadership in the field of *local* government. Her scheme of prefects and subprefects has spread to the farthest corners of the earth. One finds it, very little changed, in Portugal, Belgium, Poland, Holland, Greece, and the Balkan States. With various adaptations it is functioning in the Far East, in the Near East, and in the countries of Latin America

EVEN IN ENGLAND AND IN AMERICA.

Outside the English-speaking countries, therefore, the influence of France upon systems of local administration has been far reaching and profound.[1] Even in English-speaking countries the drift is steadily toward a greater recognition of those principles on which the French system of local government rests—uniformity, professionalism, paternalism. centralization. Both England and the United States have travelled far in all four directions during the past fifty years, and they are likely to keep on doing so. It is appropriate, therefore, that students of comparative government should know something about the circumstances under which this scheme of local organization was devised, and should appreciate the qualities which have given it a world-wide vogue.

EVOLUTION OF THE FRENCH SYSTEM:

Until after the Paris mobs stormed the Bastile on July 14, 1789, there was no system of local government in France, although the country was divided into provinces which had at one time enjoyed a considerable measure of political independence. With the growth of the royal power the political importance of these provinces had dwindled to almost nothing. The chief administrative district in France was the *généralité*, over which ruled an intendant appointed by the king

[1] The two greatest contributions of France to the science of government are her *Code Civil* and her scheme of centralized local government. Both, it should be noted, were the work of the first Napoleon.

and responsible to him alone. The monarch spoke, and the intendant translated his words into action. Each intendant went about his district ordering, supervising, and controlling all matters of administration, justice, police, and finance. But there was no uniformity in the work of these officials, hence the character of the administration varied from one domain to another. They were all bureaucrats, however, and loyal to the interests of the king.

1. BEFORE THE GREAT REVOLUTION.

Within the *généralités* there were smaller administrative areas known as communes, more than 40,000 of them, ranging from little hamlets to large cities and towns. During the middle ages these communes had secured and maintained their right to self-determination, but during the sixteenth and seventeenth centuries their municipal freedom was gradually curtailed until it vanished altogether. The monarchy, as it gained in strength, deprived the communes of the right to elect their own local officers and installed royal officials in their stead. This was done by different kings, however, and under a variety of circumstances, so that there was the greatest possible diversity in the methods of communal government No two communes, indeed, were governed exactly alike; in some of them the local offices were sold by the crown to the highest bidder, in many they were made hereditary, in others the king appointed the incumbents for short terms. In only one respect was local government uniform before the Revolution, namely, in the complete absence of popular control over any branch of it.

THE HOPELESS DIVERSITY.

Now the Great Revolution changed all this in short order. First, the Revolutionary assembly issued a decree which abolished the *généralités* and divided France into eighty-three departments.[1] It further provided for the division of each department into arrondissements, and for the division of these, again, into cantons. Within each canton the commune was to be the smallest area of local government.

2. THE DECREE OF 1789.

Here was a scheme of geographical divisions made with a pencil and ruler, a whole nation plotted out just as a real estate promoter would do it, disregarding all considerations of history and sentiment. Save in the case of the communes all the new divisions were arbitrary creations, without

ITS DRASTIC REORGANIZATION.

[1] This number was increased to 89 in 1815, then reduced to 86 in 1871, and again increased to 89 in 1918.

local traditions, and often without inherent unity. In all of them, the commune included, the government was placed by the decree of 1789 upon an elective basis. Every official—in department, arrondissement, canton, and commune alike—was to be chosen by manhood suffrage. And the central authorities were to keep their hands off. The decree made no provision for the exercise of central control from Paris. The Revolutionary assembly imagined that local democracy could be inaugurated and made to function successfully by a single stroke of the pen.

But history has proved on many occasions that you can no more give self-government to a nation than you can "give" character to an individual. Both have got to be earned, acquired, developed, and guarded with eternal vigilance. The decree of 1789 went too far and too fast. The French people were not prepared for so great and so sudden a change. As it turned out, therefore, they did not use their new freedom in a sober and judicious way. Abuses developed on every hand; onerous taxes were imposed by the newly elected governments; public money was spent wastefully; the communes ran into debt; the local police could not maintain order or enforce the laws, and the guillotines worked overtime. These abuses were so widespread and menaced the public security in such a way that the national authorities decided to curb the local freedom and stiffen their own central control.

WHY IT FAILED.

This they did in 1795 when the Revolution entered its second and more orderly stage. The principle of popular election was retained, but the local officers were brought under the supervision of Paris. A few years later, when Napoleon Bonaparte came into power, he carried the process of centralization a step farther by providing that all local officers should be appointed, not elected. Napoleon's action (1800) took out of the system most of the democracy that the Revolution had put into it. So long as he remained in power there was no more local home rule in France than there had been under the Bourbons prior to 1789. Thus did revolution produce reaction, as it always does.

3. THE REACTION OF 1795 AND THE NAPOLEONIC ALTERATIONS.

From 1800 to the present time the French system of local government has been made somewhat more democratic by republics and somewhat less democratic by kings. But the centralization which Napoleon established has never been

4. SINCE 1800.

greatly relaxed—not even after more than sixty years of republican government. A description of French local government, written in 1875, would pass muster as tolerably accurate today. France has tried no radical experiments in this field during the intervening years.

THE DEPARTMENTS

There are eighty-nine departments in France. These areas retain the boundaries given to them in 1789, which means that they are irregular in shape, size, and population. A map of the French departments looks like a jig-saw puzzle. Most of them are named after some river, mountain, or other geographical feature—thus the Department of the Seine, of the Rhône, of the Loire, of the Gironde, of the Alpes-Maritimes, and so forth. The Department of the Seine (which includes Paris) is the smallest in area but the largest in population. The French departments bear no resemblance to the states of the American Union. Geographically, and in political status, they more nearly resemble the administrative counties of England. Being arbitrary divisions they had at the outset very little self-consciousness, but during the past hundred and thirty-five years they have managed to develop a considerable amount of it. The department has now become a "historic" unit in France, with some homogeneity of interest. Modern methods of communication have naturally made it, in effect, a much smaller division than it was in Napoleon's time.

AREAS OF LOCAL GOVERNMENT: THE DEPARTMENTS.

The executive head of the department is an official known as the prefect.[1] He is appointed, without any fixed term, by the President of the Republic on the recommendation of the minister of the interior, and may be demoted, transferred, or removed by these higher authorities at any time. As a rule the post is filled by the promotion of someone from the lower ranks of the administrative service. But the minister may make his selections from any quarter that suits him. There are no limits on his range of choice. Technical competence is not the prime quality desired, but obedience, tact, and ability to carry out the policy of the government.

THE EXECUTIVE HEAD OF THE DEPARTMENT. THE PREFECT.

A prefect may be removed by the President but absolute dismis-

[1] This title was borrowed from ancient Rome, in which there was a *prefectus urbi* who served as the emperor's right-hand man.


FRANCE
SHOWING DEPARTMENTS
SCALE OF MILES
0 50 100 300
Longitude from Greenwich
West
East
SCOTLAND
WALES
ENGLAND
London
NORTH SEA
HOLLAND
GERMANY
BELGIUM
LUXEMBURG
ENGLISH CHANNEL
BAY OF BISCAY
MEDITERRANEAN SEA
SPAIN
ITALY
SWITZERLAND
Calais
Boulogne
Lille
Dieppe
Amiens
Cherbourg
Le Havre
Rouen
Sedan
Rheims
Nancy
Strasbourg
PARIS
Troyes
S. Brieuc
Brest
Rennes
L'Orient
Orleans
Tours
Nantes
Bourges
Dijon
Poitiers
La Rochelle
Limoges
Lyons
Bordeaux
Bayonne
Toulouse
Narbonne
Marseilles
Nice
PAS DE CALAIS
NORD
SOMME
AISNE
ARDENNES
SEINE INFERIEURE
OISE
CALVADOS
EURE
MANCHE
MEUSE
MOSELLE
MARNE
SEINE
SEINE ET OISE
SEINE ET MARNE
ORNE
FINISTERE
COTES DU NORD
ILLE ET VILAINE
MAYENNE
EURE ET LOIR
AUBE
MEURTHE ET MOSELLE
VOSGES
HAUTE MARNE
MORBIHAN
SARTHE
LOIRET
YONNE
HAUTE SAONE
HAUT-RHIN
LOIRE INFERIEURE
MAINE ET LOIRE
INDRE ET LOIRE
LOIR ET CHER
CHER
NIEVRE
COTE D'OR
DOUBS
VENDEE
DEUX SEVRES
VIENNE
INDRE
ALLIER
SAONE ET LOIRE
JURA
CHARENTE INFERIEURE
CHARENTE
HAUTE VIENNE
CREUSE
PUY DE DOME
LOIRE
RHONE
AIN
HAUTE SAVOIE
SAVOIE
ISERE
CORREZE
CANTAL
HAUTE LOIRE
DORDOGNE
GIRONDE
LOT ET GARONNE
LOT
AVEYRON
LOZERE
ARDECHE
DROME
HAUTES ALPES
BASSES ALPES
ALPES MARITIMES
LANDES
TARN ET GARONNE
TARN
GARD
VAUCLUSE
BOUCHES DU RHONE
VAR
GERS
HERAULT
BASSES PYRENEES
HAUTES PYRENEES
HAUTE GARONNE
ARIEGE
AUDE
PYRENEES ORIENTALES
C. Corso
Bastia
Calvi
Corte
C. Rosso
Vico
Cervione
Ajaccio
Bonifacio
Travo
CORSICA
Same scale

sals are rare. When the government desires to be rid of an inconvenient prefect it usually transfers him to some other post in the public service Or it puts him on the "unattached" list, where he draws a salary but performs no prefectoral duties. The prefect, in short, is not merely an administrative officer. He is a political agent of the central government and his usefulness in both capacities are matters for determination by the ministry which he serves. When a new ministry comes into power there are sometimes a number of transfers.

REMOVALS AND TRANSFERS.

Each of the eighty-nine French departments has its capital or chief town, with an imposing structure known as the prefecture.[1] Above its main doorway is emblazoned the ubiquitous *Liberté, Egalité, Fraternité;* and from its flagstaff floats the tricolor. In this building the prefect has his residence and his offices. Here, also, are the offices of the prefectoral staff, which consists of the perfect's confidential assistant (*chef du cabinet*), his secretary-general, and various other high functionaries. All are appointed by the authorities at Paris. In addition there are various directors of divisions and bureaus, together with a host of clerks and other employees. The laws regulate the method by which all these subordinate officials are chosen, and they also prescribe the technical qualifications in each case There is no spoils system, as we have had it in the United States, for the general qualifications are such that the ordinary political henchman cannot fulfill the legal requirements. As a rule the higher positions are filled by promotion from below, and although political influence counts for a good deal in determining these promotions, it is by no means the chief consideration.

THE PREFECT'S HEADQUARTERS AND STAFF.

The prefect occupies a dual position. He is primarily the local agent of the central authorities at Paris; he is also the executive head of his department. Powers and duties accrue to him in both capacities. As the agent of the central government he is responsible for the promulgation and enforcement of the national laws within his department. Likewise he promulgates minor decrees (*arrêtés*) on his own account. He has charge of the various public services insofar as they operate within his jurisdiction—main highways, bridges, jails, poorhouses, and hospitals, together with certain phases of public health and

HIS DUAL POSITION.

[1] In the Department of the Seine (Paris) it is known as the Hôtel de Ville. This department, as will be explained later, has two prefects.

sanitary work, education, the raising of recruits for the army, the taking of the census, the maintenance of public order, the tobacco monopoly, censorship,—the list, if given in full, would cover a whole page. On behalf of the national government he appoints a large number of officials, including school teachers, postmasters and postmen, collectors of taxes, and sanitary inspectors. In the exercise of this appointing power his discretion is limited by the provisions of laws and decrees which fix the qualifications of the appointees; but he has some discretion, and in the exercise of it is usually influenced by the recommendations of senators and deputies.

SUPERVISOR OF MUNICIPAL ADMINISTRATION.

The prefect is also entrusted with the function of keeping a watchful eye on the government of the communes or towns. The annual budgets of these municipalities must be submitted to him for approval; he appoints some of their officers; he can even suspend a mayor or a municipal council for cause.[1] He may issue orders to the mayor of a commune on any matter connected with municipal police administration. In most of this work the prefect is governed by instructions which come to him from the ministry of the interior, or, in some cases, from one of the other ministries. Sometimes these instructions are detailed and explicit in character, for in matters of nation-wide concern it is desirable that all the prefects should act alike. But as respects the special problems which arise from time to time in his own department the prefect is generally permitted to use his discretion. If he is in doubt he gets into touch with the ministry by long distance telephone.

HIS POLITICAL ACTIVITIES.

As local agent of the national government *M. le Préfet* is also a politician, and usually a very active one. It is sometimes said that the first qualification of a good prefect is his skill as a vote-getter—not for himself but for the supporters of the ministry in the Chamber. At every election his hand is in evidence. He has no scruples about using the extensive powers of his office, and such patronage as he has, for the benefit of his political friends. When his own side loses the election he expects a demotion (and usually his expectations are fulfilled); when it wins he counts on a move upward—a transfer to a more important department. This active participation in politics has made the prefect's position far more difficult than it would be if he were permitted to maintain a strict neutrality; but prefectoral electioneering

[1] Subject to a review of his action by the council of state. See *above*, p. 559.

has become traditional in France and some writers on French government have expressed the conviction that the only practicable way to make the prefect's office non-political is to abolish it altogether.

To understand this curious combination of administration and bossism, it is necessary to bear in mind that Napoleon created the prefect in his own image. He desired to have, in every department, an underling on whom he could rely in all things. The prefects were to be the doers of his will, not the keepers of his conscience. Naturally, when this system was geared to a republican scheme of government it jolted considerably, and it continues to jolt. For the prefect is no longer the *missus dominicus* of an emperor whose authority passes unquestioned; he is the agent of a minister whose precarious tenure of office depends on the caprice of the Chamber of Deputies.

THE THEORY AND THE PRACTICE OF THE PREFECTORAL OFFICE.

As executive head of his department the prefect prepares all business for the general council. This body, as will be indicated presently, is the elective legislature of the department, but it is forbidden to deal with any matter which has not been laid before it by the prefect. The latter, in this connection, is more than a prime minister, for he has the sole right of initiative. To the general council he submits each year a budget of proposed local expenditures and this budget is passed with such changes as the council may decide to make. But the appropriations, after they are made, stand wholly within the prefect's control; the council has no share in spending them.

THE PREFECT AND THE GENERAL COUNCIL.

On various other matters the general council may pass resolutions and these, if they are within the law, the prefect carries into effect. But the council no more controls the prefect in France than the legislature controls the governor in the American states. In both cases it is desirable that the executive shall work in harmony with the legislative body, because the latter controls the appropriations; but this does not mean that the executive occupies a dependent position. The general council cannot remove a prefect, or reduce his salary, or curtail his powers. When the two come into conflict, as they sometimes do, the deadlock is solved by an appeal to Paris. The President of the Republic, on the advice of the minister of the interior, has power to dissolve the general council and to order a new election. Or, if the fault

THE COUNCIL DOES NOT CONTROL HIM.

seems to lie with the prefect, he can transfer this official to some other department.

The prefecture as an institution is one of great importance in France, because the entire system of local government is clearly pivoted on it. Its technical mechanism runs with the precision of an airplane motor. Cabinets at Paris flit in and out of office; ministers abide their destined hour and go their way; but the prefects and their subordinate officers maintain the whole administration as a going concern. France might change from a republic to an empire with very little effect upon the life of the average citizen; but let the eighty-nine prefectures be abolished and the country would be in chaos within a week.

IMPORTANCE OF THE PREFECT'S OFFICE

"Just get yourself born in France," the saying is, "and the prefect will do the rest." Yes, the prefect or his subordinates will give you a birth certificate (*acte de naissance*); they will certify you for admission to school, guard you in person, property, and health, grant you permission to marry, —they will even perform the civil marriage ceremony. They will tell you when your turn comes to serve in the army, count you in the census, enroll you as a voter, take care of you if you become sick or insane, and issue the burial permit when you die. Even more, they will bury you, for the funerals in France are conducted by the public authorities. The prefect is the little father of his people, the central figure in this seamless web of administrative paternalism. In the person of this all-pervading functionary the shadow of the Great Corsican still hovers over every corner of the land. The billboards everywhere are plastered with the prefect's *affiches*, his decrees which regulate all manner of things from traffic on the highways to the price of cigarettes. Nothing seems too inconsequential for a prefect's decree. They fly from his pen like sparks from a blacksmith's anvil. He is as omnipresent as Providence—and his ways are sometimes as inscrutable.

WHAT HE DOES FOR YOU.

For over sixty years the Third Republic has been trying to harmonize local self-government, as embodied in an elective council, with rigorous centralization as it is enshrined in the prefect's office. This means that the prefect must go through gestures of deference to the public opinion of his department while actually defying it in accordance with instructions from Paris. It is small wonder that he often fails to satisfy

HE IS IN A DIFFICULT PLACE.

either of his two masters. As a buffer between bureaucracy and the crowd the shocks come to him from both directions. "The agent of the government," says Hanotaux, "and the tool of a party, he is also the representative of an area which he administers. He must remain impartial, foresee difficulties and disputes, remove or mitigate them, conduct affairs easily and quickly, avoid giving offence, show the greatest discretion, prudence and reserve,—and yet always be a cheerful, open, and good fellow; he must be always accessible, speak freely, and be neither affected nor churlish; . . . he must pay attention to and conciliate all the opinions, interests, and jealousies which rage around him." [1] A rather stiff set of specifications for anyone to fulfill, one would think.

THE GENERAL COUNCIL

THE GENERAL COUNCIL OF THE DEPARTMENT.

The general council of the department is made up of councillors who are elected by manhood suffrage for a term of six years, one half of them retiring triennially. The largest general council (with the exception of the Department of the Seine) has sixty-seven members; the smallest has only seventeen.[2] The general council meets regularly twice a year at the chief town of the department, but may be called in special session when necessary. When the council is not in session it leaves an executive committee to exercise routine functions on its behalf. This committee is required to meet at least every month but it sits in almost continuous session.

ITS FUNCTIONS.

In a broad way the general council serves as the legislative body of the department. It has much to do with the regulations relating to poor relief, public buildings, and most perplexing of all, the traffic rules. But its legislative powers are narrow for three reasons, *first*, because nearly all important matters are dealt with by national decrees; *second*, because the general council is forbidden to take up any "political questions" (a term which has been given a very broad interpretation), and *third*, because its actions may be overruled by the central authorities at Paris. In addition, as has been pointed out, no matter can be taken up by the council except on the prefect's initiative.

[1] Gabriel Hanotaux, *L'Enérgie française* (Paris, 1902), pp. 129–131.

[2] In the Department of the Seine the general council is made up of the municipal council of Paris, which has eighty members, together with twenty-one members from two suburban arrondissements.

Of late years the general councils have been given somewhat greater liberty of action, and they are now beginning to serve, in a limited way, as departmental parliaments.

The chief function of the general council is to vote the annual budget of the department.[1] This budget is tentatively prepared in the office of the prefect and submitted to the council at one of its regular sessions. It is then discussed, item by item, and changes may be made in it by majority vote of the council, but such changes are subject to veto by the national government. When the budget has been finally approved, the council figures out the amount of revenue needed. Then it apportions among the various arrondissements the sums of money required to cover the total expenditure. The council is also supposed to examine the accounts of the prefecture but this task it invariably refers to a committee. With actual administration the council has nothing to do, but various questions of administrative policy are submitted to it by the prefect from time to time. Finally, the members of the general council (as elsewhere pointed out) constitute a section of the electoral college which chooses the senators from the department.[2]

THE DEPARTMENTAL BUDGET.

French writers often lay stress on the fact that the department is not a mere administrative district but an area with a corporate personality, with the right to sue and be sued, to hold property, and to make contracts. In a legislative sense that is true, but it does not alter the fact that the French department does not enjoy as much home rule as an English county. It has no rights that the national parliament cannot take away. Its officers have no final authority. It has the forms of self-determination, that is all. Its people elect the members of the general council, but this body does not control the executive branch of departmental government. The principle of executive responsibility has not been extended to local government in France as it has been in England.

LEGAL STATUS OF THE DEPARTMENT.

A system of centralized local government can be made efficient, but it is rarely popular with the people whom it serves. In France the *tutelle administrative* is continually under fire.[3] Its critics are fond of quoting the old maxim

PROPOSALS FOR REFORM.

[1] The budget provides funds for the maintenance of the prefectures, the court houses, the prisons, and other institutions of correction, besides various roads and bridges.

[2] *Above*, p. 460.

[3] P. Larogue, *La tutelle administrative* (Paris, 1931).

that "centralization produces apoplexy at the brain and paralysis at the extremities." They complain that it clogs the central mechanism and deadens popular interest in local affairs. As for the prefect, his office is the target of a continuous fusillade, and it can hardly be otherwise so long as he is compelled to run with the hares while he hunts with the hounds. It is not improbable, indeed, that the prefect's office would have been abolished long ago if Frenchmen had been able to agree upon something to put in its place. During the past thirty years there have been numerous proposals to consolidate the eighty-nine geographical departments into a much smaller number of "regions," each with a real legislative body and a responsible executive. Measures of this character have been repeatedly brought forward in parliament, but no one of them has as yet survived the initial stages there. Nevertheless, regionalism still has vitality in France, and some day the movement may prove successful [1]

THE DIFFICULTIES IN THE WAY.

To an outsider it does not seem that a mere geographical rearrangement would accomplish much. The root of the trouble does not lie in the fact that the departments are too numerous or too small. There are communities in the United States, not half the size of the French departments, which have a very large measure of local home rule. The trouble does not arise from the map of France but from the traditions of the French. The old régime which came to an end in 1789 was paternal and centralized in the extreme. The psychology of the people had become so habituated to paternalism and centralization that it could not be transformed overnight, as the revolutionists imagined. During the past hundred years there has been some progress toward decentralization, and this might well be speeded up. But there are two reasons why it cannot easily be accelerated, and the first is the fact that the masses of the people in the rural districts are making no clamor for it. Their inclination is to let well enough alone. The second reason arises from the ardent desire of ministers and deputies to keep all the local patronage that they now control. Any reorganization of local government would inevitably take some of this away—and from the politician's point of view any reform that takes away patronage is an undesirable reform.

[1] For a full discussion see R. K. Gooch, *Regionalism in France* (New York, 1931), especially chap. iv.

THE ARRONDISSEMENTS

The departments, as has been said, are divided into arrondissements. There are now 279 of these. They do not bear designatory names, like the departments, but are numbered—first, second, third arrondissement. Each is a department in miniature, with an appointive subprefect and an elective council. Of themselves the subprefects have no independent powers, or almost none. They are merely the channels through which the prefect obtains information and transmits his orders—the prefects' "letter boxes" they are sometimes called. The chief reason for their existence may be found in the simple fact that no prefect can attend to all the details of local government. The subprefect relieves him of minor functions, both administrative and political.

THE ARRONDISSEMENT.

THE SUBPREFECTS.

The subprefecture, accordingly, is a busy place with a considerable staff and a large amount of clerical work to be done. The subprefect is responsible for a vast amount of daily routine; in addition he spends a portion of his time in political activities. For these two hundred and seventy-nine subprefects are not only the fingers but the eyes and ears of the ministry. Every subprefect hopes for promotion, and the fulfillment of this hope depends to some extent upon the success with which he can keep his district in line when a general election comes.

WHAT THEY DO.

The council of the arrondissement has little more than nominal functions to perform. It makes no laws and votes no money. Until a few years ago it had the duty of allotting the departmental tax quotas among the communes, but even this perfunctory task has now been taken away. The members of the council are ex officio entitled to sit in the electoral college of the department (which elects the senators) and the arrondissements also serve as the election districts from which members of the Chamber of Deputies are chosen. Were it not for these electoral functions they might readily be abolished. Unlike the department on the one hand and the commune on the other, the French arrondissement is not a corporate entity and owns no property. It is a purely administrative unit.[1]

THE ARRONDISSEMENT COUNCILS.

[1] Each arrondissement is divided into cantons, but the canton likewise has no corporate organization. It is merely a geographical division, a sort of enlarged ward, which serves for various electoral and judicial purposes.

THE COMMUNES

Finally, there is the commune. It is the only area of local government that antedates the Revolution. The American mind, filled as it is with distinctions between townships, villages, towns, boroughs, and cities, finds difficulty in grasping what a French commune really is. The French municipal code defines it as "any tract of territory the precise limits of which were defined by the decree of 1789 or which has been recognized by any subsequent law or decree." As a matter of fact the term includes everything that would be called a municipal corporation in the United States—whether city, town, village, or township. A commune is any French community, big or little. Marseilles is a commune; so are Lille, Bordeaux, Toulon, and Lyons; so is Château-Thierry; so is every little hamlet in which American troops were billeted during the days of the great push through the Argonne. Some of these little communes have fewer than fifty inhabitants.

CITY, TOWN, AND VILLAGE GOVERNMENT.

All in all there are about 38,000 communes in France. Each is governed under the provisions of the same municipal code.[1] This in some ways is a serious defect; for a city is a good deal more than a village writ large. Its problems differ not only in extent but in character. The French government has recognized this to some extent by providing the bigger communes with larger municipal councils and some additional administrative machinery, while holding broadly to the principle of uniformity.

ALL CREATED EQUAL.

The government of the commune is a relatively simple affair, as local governments go. Each commune has a municipal council of varying size, depending upon its population. The councillors are elected by manhood suffrage for a six-year term and serve without pay. In the small communes the whole council is chosen on a general ticket, but in the larger ones there is a division into wards, each of which elects a portion of the council. This municipal council is the dominating factor in local government, for it not only makes the appropriations but elects the mayor and the other officials who have the spending of the money. Some of its powers, however, are limited by the supervision of the prefect.

THEIR FRAME OF GOVERNMENT:

I. THE COUNCIL.

[1] The best commentary on the French municipal code is Léon Morgand's *La loi municipale* (10th edition, 2 vols., Paris, 1923).

The first duty of a newly elected municipal council is to choose a mayor (maire). This it must do from within its own membership. The mayor is chosen to hold office during the same term as the council; and although serving as chief executive of the commune, he continues to be a member of the council and acts as its presiding officer. There is no separation of executive from legislative functions in the French city. Invariably the mayor is a man who has already served one or more terms in the council and has become a recognized leader in his work. Sometimes the municipal campaign turns on the issue of reëlecting or not reelecting the mayor.

2. THE MAIRE

The council of the commune also selects, from within its own membership, one or more adjoints or assistant mayors, who hold office for six years but continue to be regular members of the council.[1] The mayor, the assistant mayors, and the councillors all sit together and constitute the government of the commune. The only difference between the smaller and the larger municipalities is that the latter have more adjoints and bigger councils. There is no difference in the powers of the various municipal authorities or in their relations to one another. So, if you describe the government of one French city, your description will serve for them all. The American student of municipal institutions need not be reminded that nothing of that sort is true in his own country.

3. THE ADJOINTS.

Although the mayor of the French commune is not an independent executive officer like the American mayor, he is by no means a figurehead. He has considerably more authority than the mayor of an English borough. Between the American and the English mayor, in other words, he stands midway. The council elects him (as in England), but thereafter it cannot remove him, nor has it any direct control over his actions. Still, this lack of direct control is not a matter of much practical importance for two reasons. first, because the council does not choose a mayor unless it is reasonably certain that he will work in harmony with it, and, second, because the mayor has no way of getting money unless the council gives it to him. Even the money to

POWERS OF THE MAYOR.

[1] In the smallest communes there is one assistant mayor; communes of from 2,500 to 10,000 population have two; those of 35,000 have three, and so on. The largest communes have twelve with the exception of Lyons which has seventeen. Paris, as will be seen later, has no adjoints; it has two prefects and twenty maires.

it cuts the cards. Broadly speaking the council takes the initiative in most matters of municipal government except finance, police, and education. It may adopt resolutions relating to various questions of municipal policy and if these are not annulled by the higher authorities, the mayor and his adjoints see that they are carried into effect. Prefects and subprefects everywhere keep a watchful eye on all the municipal authorities. But their interference is not as frequent as it used to be.

FRENCH CITIES HAVE BEEN WELL GOVERNED.

Whether by reason of this prefectoral supervision, or in spite of it, French cities have been well governed. They have been better governed, on the average, than the cities of the United States. The city's money has been honestly spent, and good value has been obtained for it. The grosser forms of malfeasance and peculation, which have been so common in the cities of the United States, are virtually unknown in France. Contracts are fairly awarded to the lowest bidder; the spoils system has been kept in control; the officials of the various departments have been given security of tenure; and the police have remained reasonably honest. It is sometimes said that French cities are unprogressive, that they let their affairs travel in a rut and are slow to adopt new methods. There may be truth in this allegation; but it is to be remembered that French cities have been growing very slowly and hence have not had need for much replanning or for large reconstructions in their public services. The French temperament, moreover, is not given to exuberance over anything for the mere reason that it is new.

THE GOVERNMENT OF PARIS.

A word should be added with reference to the government of Paris. The French capital is under a special dispensation, and there are several reasons for its being so placed. Paris is the largest city in France, five times as large as its nearest rival, Marseilles. It is the seat of the national government with an enormous amount of national property within its bounds, including legislative and executive buildings, museums, libraries, palaces, and public monuments. Paris, moreover, has been a troubler in Israel. It is the point from which all the revolutions and *coups d'état* have emerged. History is to a nation what memory is to man—and a burnt child dreads the fire. Although Paris has never contained more than ten per cent of the French population, the city has been responsible for at least ninety per cent of the nation's political vicissitudes. The city on the Seine is both

the head and the heart of France. The Third Republic takes no chances on its good behavior.

Paris virtually covers a whole department, the Department of the Seine, and is governed as such by a prefect. Unlike the other eighty-eight departments, however, it has an additional prefect, known as the prefect of police, whose function is the maintenance of law and order. Both prefects are appointed by the President of the Republic, acting upon ministerial advice. There is also a municipal council of eighty members, four from each of the twenty arrondissements into which the city is divided. With the addition of certain members from communes just outside the city (but within the Department of the Seine) this municipal council serves also as the general council of the department.

THE TWO PREFECTS AND THE MUNICIPAL COUNCIL.

Paris, therefore, has no mayor in the American sense. But the administrative heads of the twenty arrondissements are called mayors, although they are in reality subprefects. They are chosen in the same way as subprefects and have similar functions. A large portion of the city's routine work is performed at the headquarters or *mairie* of each arrondissement and is not concentrated at the city hall as in American cities. This attempt to combine the government of a city with that of a department has resulted in the creation of a curious hybrid. There is a centralization of power and a decentralization of functions. The prefect of the Seine is the dominating factor in Parisian government but like all the other prefects he is merely the agent of the ministry. The city council votes the budget, and it has some other important powers; but it does not control the city administration.

THE PARIS WARDS OR ARRONDISSEMENTS

Many Parisians are dissatisfied with this arrangement and there has been a persistent clamor for a greater degree of metropolitan home rule. Thus far, however, the clamor has availed nothing because the French parliament is made up, for the most part, of senators and deputies from the rural areas and small towns who look upon the capital with suspicion. Their attitude toward the City of Light continues to be a strictly bucolic one. Recollections of barricades, jacqueries, the Red Terror, and the Commune still haunt the rural French mind. "Paris belongs to France," they say in the provinces, "and France must control its administration." This

THE FRENCH CAPITAL, LIKE THE AMERICAN, WANTS HOME RULE.

might sound strange to American ears were it not for the fact that precisely the same doctrine is applied to Washington. The Department of the Seine is not allowed to manage its own affairs, neither is the District of Columbia,—but that is another story and one which does not belong in this book.

The subject of French local government in its various phases is fully treated in all the standard works of French administration (see *above*, p. 564). Léon Morgand's *La loi municipale* (10th edition, 2 vols., Paris, 1923) is the most useful book on the government of the commune. There are eight chapters on French municipal government in William B. Munro's *Government of European Cities* (revised edition, New York, 1927), pp. 205-336. A full bibliography is there appended (pp. 413–423). Mention may also be made of M. Félix, *Petit dictionnaire de droit municipal* (Paris, 1926), and M. Leroy, *La ville française. institutions et libertés locales* (Paris, 1927).

On the government of Paris the most comprehensive book is Eugène Raiga and Maurice Félix, *Le régime administratif et financier du département de la Seine et de la ville de Paris* (Paris, 1922). Albert Guérard, *L'Avenir de Paris* (Paris, 1929) is an interesting study.

CHAPTER XXXII

FRANCE AS A WORLD POWER

And threat'ning France, plac'd like a painted Jove,
Kept idle thunder in his lifted hand.

—*Dryden.*

France, like Great Britain, is a world power, with possessions scattered all over the globe. She is today more distinctly an imperial power than she has ever previously been, even under the Bonapartes. The European territory of France covers a little more than 200,000 square miles, which is less than the area of Texas. But the tricolor flies over more than a million square miles outside Europe—in Africa, in Asia, and in America.

GREATER FRANCE: HER AREA.

The population of France herself is less than 40,000,000; but the French overseas possessions, including Algeria, the colonies, the protectorates, and the mandated territories, have a combined population of almost 60,000,000. Apart from the commercial possibilities which may be available in these varied possessions this reservoir of man-power is of great importance to France, because it serves to counterbalance, in some degree, the numerical weakness of the French in Europe. The failure of her own population to grow at the rate maintained by her neighbors has given France a serious problem, especially in connection with her desire for security.

HER POPULATION.

France and England, as colonial powers, afford some interesting analogies and some striking contrasts. Both made a belated entry into the field of colonial expansion, having delayed until after Spain and Portugal had taken what then seemed to be the choicest territories in the new world. But although they began late, both France and England made rapid progress. Both obtained a strong foothold in America, and both undertook to get control of India. Both lost their first colonial empires in the latter half of the eighteenth century, the one by conquest, the other by revolution. Both began the creation of a second colonial empire,

FRANCE AND ENGLAND AS COLONIAL POWERS: THE ANALOGIES.

and during the nineteenth century both succeeded in acquiring great tracts of territory in various regions of the globe.

THE CONTRASTS.

But the analogies are outweighed by the contrasts. The British empire of today has been built up, for the most part, by private initiative, by the activities of traders and commercial companies. In English colonization the merchant has invariably gone ahead, dragging his government after him. In French colonization, on the other hand, the government has assumed most of the initiative. The commercial exploiter has usually waited for his government to lead the way, or, at any rate, to encourage him with a subsidy. Dr. Johnson, sipping his seventh cup of tea, once expressed astonishment that any European should go roaming in far-off lands when it is so much easier to sit comfortably at home. But pioneering has been the sport of the Saxon. There is a roving strain in his blood. His neighbors across the Channel have not been moved by it in the same degree.

ATTITUDE OF THE TWO GOVERNMENTS.

There are other differences. England's colonial policy has been unsteady and opportunist, while that of France has been guided by a fixed and consistent purpose. England, again, has specialized in the middle latitudes, while France has devoted most of her energies to the tropics. Her principal dependencies—Algeria, Tunis, Madagascar, Indo-China, the French Congo, Somaliland, French Guiana—are all tropical territories. It is for this reason, among others, that the French have not had to wrestle much with difficult problems of colonial self-government and with demands for self-determination. On the other hand, France has given some of her outlying territories the privilege of being represented in the home parliament, which Britain has not yet done. As a final difference, the French are still inclined to look upon their colonies as areas of exploitation which exist primarily for the benefit of the mother country, although this point of view is gradually being changed. England, as regards her great dominions, abandoned it long ago.

FRANCE AS A FACTOR IN WORLD POLITICS.

"Happy the land whose history is dull!" It was a Frenchman who said it, but there is no tedium in the annals of his own country. No other land has its pages of history so crowded with victory and defeat, success and disaster, glory and humiliation, each following the other in quick alternation. For five centuries no other country has been so steadily involved in the turmoils of humankind. Modern history

records very few international episodes with France left out. To some extent the explanation of this ceaseless activity may be found in the location of the country, for France sits in the very center of Europe, a quadrilateral with a frontage on two seas. She is neither a North-European nor a South-European country; she is both. Six nations are on her flanks,—England, Germany, Belgium, Spain, Italy, and Switzerland. No other great power has so many immediate neighbors. No other great nation, accordingly, has had so strong an incentive to become involved in the meshes of European diplomacy. Geography has denied France the factor of isolation which has profoundly affected the history of England, and to an even greater extent the history of the United States.

THE GALLIC RACE.

There is no race of men, moreover, like the Gallic race. Frenchmen stand together, a compact and coherent mass, the most homogeneous in Europe. Heirs to the Roman tradition they have always believed themselves to be the salt of the earth. Their manifest destiny they have taken for granted. Hence the policy of the nation has been more often guided by emotion and sentiment than by reason and cool calculation. Frenchmen are willing to be liked or disliked, as the rest of the world may please; but they are not willing to be ignored. A great race, none the less, and one that has contributed its full share to progress in every field. At any rate it is to racial inheritance, as well as to geography, that France owes her strong nationalism, her restless diplomatic activity, her ability to bear overwhelming disasters, and her extraordinary powers of recuperation.

RISE AND FALL OF THE FIRST COLONIAL EMPIRE:

1. IN AMERICA.

During the sixteenth century, when the various countries of Europe engaged in the great race for colonial possessions, France was the premier nation of the Continent. Her population was three times that of England. Her wealth was greater, and more widely diffused among the people. Yet the French were the last to enter the field of overseas expansion, and when they got busy all the best territories were gone. Spain and Portugal had acquired Central and South America; England had entrenched herself in India and along the Atlantic seaboard. France had to go farther north to the Gulf of St. Lawrence. Yet the French made a brave attempt to establish a Bourbon empire in the new world and by 1750 they were in the way of succeeding. At that date France possessed the whole region north of the St. Lawrence and the Great

Lakes, together with what is now the American Middle West, part of the Northwest, and Louisiana. The French were also striving to make good their claim to the Ohio Valley, thus hemming the English colonies between the Alleghenies and the sea. Had France succeeded in this ambitious plan, how different the history of the new world would have been!

2. IN INDIA.

In India also the French arrived late but made rapid progress when they came. The expansion of their power in the East was so striking, indeed, that they were nearly on even terms with the English when the great duel between the two nations began. For more than a decade they fought it out on three continents. At the white man's behest, as Macaulay says, brown men knifed one another on the coasts of Coromandel and red men scalped each other on the shores of the St. Lawrence. In the end France was the loser, east and west. By the Treaty of Paris she gave up her dominion over palm and pine. Virtually her whole colonial empire passed into English hands. The date of this treaty, February 10, 1763, was a great day in the chronicles of the sceptered isle. Never did England sign such a peace before.

THE OLD COLONIAL POLICY.

In the management of her first colonial empire France did not display a high degree of imperial statesmanship. Her policy had all the vices of Roman expansion without the virtues. She ruled her colonies with an iron hand and gave them no vestige of local self-government. Those who have read Parkman's immortal volumes on the French in Canada need not be told that no Roman province was ever more completely delivered into the hands of publicans and sinners.[1] Much has been said and written about England's oppression of her American colonies during the first half of the eighteenth century, but let the student of colonization place the institutions of New England and New France side by side during this period. He will find that English colonial policy, with all its shortcomings and mistakes, was by far the more generous and enlightened of the two.

THE NAPOLEONIC INTERLUDE.

The French took the loss of their first colonial empire philosophically. Their colonial ambitions were not abandoned but deferred—necessarily deferred because France was on the eve of grave troubles at home. The rumblings which preceded the Revolution of 1789 could already be heard.

[1] The most interesting book of history ever written by an American is Francis Parkman's *Old Régime in Canada* It is on the shelves of every public library.

It was not until this era of chaos had been definitely ended that the French government could once more turn attention to the acquisition of colonies. Bonaparte had great plans in this direction. He hoped to conquer the whole of North Africa and make it tributary to France as it once had been to Rome. This would give him a base from which he could strike at India and wrest it from English control. His eagles would fly over mosque and temple. That is why he planned his ill-starred expedition to Egypt and fought the battle of the Pyramids. But the Bonapartist vision came to naught, as it was bound to do, so long as England held control of the seas.

THE SECOND FRENCH COLONIAL EMPIRE.

ALGERIA.

The Napoleonic Wars left France exhausted, but still with colonial aspirations. The idea of extending the French sway over northern Africa had captivated the national imagination. Here was good territory, close at hand, and supposedly easy to conquer. The opportunity to make a start was presented in 1827 when the native ruler of Algiers declined to make amends for an insult to the French consul-general. So his city was bombarded, and when this did not bring him to terms an expedition was convoyed across the Mediterranean. In the end the whole of Algeria was subdued, but only after an unexpectedly long and expensive campaign. Then the country was annexed to France.

ITS AREA AND POPULATION.

This annexation virtually doubled the territories under French control, for Algeria is slightly greater in area than France herself. It contains some highly fertile plains and valleys within easy access of the Mediterranean coast, together with a mountainous hinterland which has considerable mineral wealth. The total population of Algeria is now about six millions, of whom only ten per cent are Europeans, chiefly French and Spanish. The rest are of mixed blood, for Algeria has been at various times overrun by the Phoenicians, the Romans, the barbarian tribes of Europe, and the Mussulman Arabs, each of whom left its racial imprints. Agriculture, including the raising of cattle and sheep, is the chief occupation of the people, and Algeria sends large quantities of foodstuffs to France. There is free trade with France both ways, except in the case of a few enumerated commodities.

Algeria is regarded, in a political sense, as an integral part of France. Its chief executive is a governor-general, appointed by the President of the Republic on the recommendation of the minister of the interior. Under the supervision of this minister the governor-

general has charge of the military forces and of police administration. He prepares the annual budget, which is voted by the French parliament but is kept separate from the regular national budget. The governor-general of Algeria is assisted by two councils, one consultative and the other deliberative. The former is wholly appointive and has advisory functions only; the latter, known as the superior council, is made up in part of high officials and in part of councillors elected by French residents.

ITS GOVERNMENT.

Algeria is divided into three departments (Algiers, Oran, and Constantine), each of which is governed by a prefect and a departmental council, much after the fashion of the eighty-nine departments in France.[1] But the members of the departmental councils in Algeria are not chosen by all the people. The suffrage is restricted to French citizens. This does not shut out all but Frenchmen, however, for in 1919 French citizenship was extended by law to natives above the age of twenty-five who served in the World War, or who are owners of land, or who can read and write. In addition to the elective members of the general councils, certain councillors are also nominated by the governor-general to represent the unenfranchised natives. The departments, as in France, are divided into arrondissements and within the latter are numerous communes or municipalities.

LOCAL GOVERNMENT IN ALGERIA.

From Algeria the French eventually spread over into the contiguous territory of Tunis, which is of historical interest as the seat of ancient Carthage. This territory was invaded and became a French protectorate in 1881. Technically it still continues to be a protectorate, although it has become to all intents a French colony. The Bey of Tunis remains the titular sovereign, but virtually all authority belongs to a French resident-general who is appointed by the President of the Republic on recommendation of the French foreign office. This resident-general serves as minister of foreign affairs in the Tunisian ministry. With him are ten other ministers, chiefly French officials, who serve as the heads of remaining executive departments in the protectorate. They are nominally appointed by the Bey of Tunis but in reality are chosen by the minister-resident in consultation with the French foreign office. Tunis also has a parliament known as the grand council. It is made up of two sections, one

TUNIS.

THE GRAND COUNCIL.

[1] A portion of the country, known as the Territories of the South, is not included in any of these departments but is under military rule.

representing the French and the other the natives. This grand council has authority over all items in the Tunisian budget except those designated as mandatory,—for example, interest on the public debt, the salary of the resident-general, and so forth. Tunis is not divided into departments but into regions, with a French comptroller in charge of each.

On the other side of Algeria is Morocco, a territory which managed to retain its independence until long after all the others had lost it. This was partly because Spain and England, as well as France, were casting covetous eyes upon it. Each was unwilling that any other country should capture the whole prize. In 1904, however, it was arranged by a series of agreements among the three nations that France should have liberty of action in Morocco in return for certain concessions to Spain on the coast and various compensations to Great Britain elsewhere. But at this stage Germany intervened with a warning that she would not recognize these arrangements and for a time the European horizon became overcast with war clouds. But a compromise was patched up and although not regarded as satisfactory to anyone, it served until the close of the World War when France obtained an opportunity to settle the fate of Morocco in her own way. Germany, by the Treaty of Versailles, was required to surrender all that she had obtained in privileges and compensations before the war.

MOROCCO.

Morocco is now divided into three zones—Tangier (which is administered by an international commission), a Spanish zone along the Mediterranean, and all the rest of the country which is a French protectorate. The French zone is by far the most extensive and embraces an area as large as France herself, with an estimated population of nearly six millions. This territory is still governed in the name of the sultan, who is both the civil and religious ruler of his people. But his civil authority is controlled by a French resident-general. There is a ministry, also under French control, but as yet no representative council. The agricultural and industrial possibilities of Morocco are still unknown, for the interior of the country has not yet been occupied by its new masters.

PRESENT GOVERNMENT OF MOROCCO.

The African dependencies of France are not confined to the Mediterranean region. Reckoned in square miles, the French have more territory in Africa than the English. But this is because France owns the great Sahara desert—a tract of imperial vastness which has very

little value unless it can be irrigated. Other African territories owned by France are Senegal, Guinea, the Ivory Coast, Dahomey, the Niger region, and the Somali Coast, the whole with a population of about thirteen millions. The French Congo, in equatorial Africa, is a large and valuable tract bordering the Belgian Congo. By the Treaty of Versailles the French obtained mandates for a large part of two former German colonies, Togoland and the Cameroon, on the West African coast.

OTHER FRENCH POSSESSIONS IN AFRICA.

The island of Madagascar, on the east coast, is larger than France, although one may not realize it from a glance at the world map. The French took possession of this island nearly two hundred years ago and then abandoned it. Later they went back and declared it a French protectorate, which it remained until 1896 when it became a colony. Madagascar supports a population of nearly four millions, but the French inhabitants number only about fifteen thousand. It is ruled by a governor-general who receives his instructions from the minister of the colonies in Paris. The governor-general is assisted by an advisory council and the island is divided into provinces with French commissioners in charge.

MADAGASCAR.

In Asia the French have maintained a foothold for nearly three hundred years. By the Treaty of Paris (1763) they surrendered most of their holdings in India but were permitted to keep Pondichéry and a small tract along the Coromandel coast. This territory France still retains but she has never been able to expand it, for the rest of the Indian peninsula is under British control. Further to the eastward, however, the French have built up a valuable empire in Indo-China. This is made up of five dependencies,—Cochin China, Cambodia, Annam, Tonkin, and Laos—which have China to the north of them and Siam to the west. Together these dependencies have a population of about twenty millions. Cochin China is a colony; the others are still called protectorates. In partial keeping with this status there is a governor-general for the entire territory, a governor in Cochin China, and a resident-general in each of the other states. The governor-general is assisted by a superior council, the members of which are either ex officio or appointive. There is a single budget and a uniform tariff for the whole of Indo-China.

THE FRENCH COLONIAL EMPIRE IN ASIA.

The island of Réunion, in the Indian Ocean, also belongs to France. In the Australian archipelago the island of New Caledonia

and some adjacent islands belong to her, and in the South Pacific there are various French islands, among which Tahiti is the best known. From the wreck of her first colonial empire France salvaged a few possessions in the new world. She still holds two small islands (St. Pierre and Miquelon) off the coast of Newfoundland which are used as the headquarters of the French fishing fleet. France also retains two islands in the Caribbean (Martinique and Guadaloupe), and holds dominion over French Guiana on the northeast coast of South America.

THE ISLANDS.

Among the mandates given to France at the close of the World War, one is of special importance—the mandate for Syria. This territory includes a broad coastal strip of the old Turkish empire, with a population of three millions. This population is largely of Arab origin, and Arabic is the language most generally used, but there are large foreign elements in the towns, particularly in Damascus, Aleppo, and Beyrut. The land is agricultural with no great mineral resources. France maintains a small army of occupation in the country and carries on the civil administration through officials who are under control of the French foreign office.

SYRIA.

Mention has been made of the fact that some of the French colonies (not including the protectorates) have been accorded representation in the home parliament. This is a concession which England has not made to any of her dominions. The United States has given the Philippines and Puerto Rico the right to send commissioners to the House of Representatives at Washington; but these insular representatives are not regular members of the House and are not privileged to vote. The senators and deputies from the French colonies have full rights of membership in their respective chambers. In addition to the representation from Algeria there are four senators and ten deputies representing the overseas possessions of France. This representation is allotted arbitrarily, not on a basis of area or population. Réunion, Martinique, and Guadaloupe have each one senator and two deputies; French India has one senator and one deputy; Senegal, Guiana, and Cochin China have each one deputy but no senators. The other colonies and the protectorates have no representation. Both senators and deputies are chosen by the French citizens, including natives who possess certain qualifications, but most of the natives take no part in the elections.

REPRESENTATION OF THE COLONIES IN THE FRENCH PARLIAMENT.

As a plan of colonial representation, this arrangement is quite inadequate. It leaves some of the newer and most important colonies (notably Madagascar) without recognition. As respects the represented colonies it affords a useful channel for the presentation of their grievances and petitions, but beyond this it has little value. In a Senate of over three hundred members, and a Chamber of six hundred, the colonial delegations form a rather diminutive bloc. Their support on any measure is hardly worth making a bid for. Moreover, it has been the frequent practice of the colonies to select, as their senators and deputies, Frenchmen who are already active in politics at home and who sometimes have no special knowledge of colonial conditions. There is a common impression that these colonial senators and deputies do not accurately reflect the public opinion of the colonies from which they are accredited, but merely the wishes of the French officials who dominate the colonial elections.

INADEQUACY OF THE PLAN.

The minister of the colonies is the chief supervisor of French colonial affairs. He is chosen in the same way as the other French ministers, and like them is responsible to the Chambers. He has general charge of all the territories belonging to France or under French protection outside of Europe, with the single exception of the territories in Northern Africa. The French colonial ministry is organized on an elaborate scale, with various services and bureaus. Each bureau is concerned, not with a group of colonies, but with some branch of colonial activity,—for example, colonial finance, colonial trade, or colonial police. A very large amount of routine business is handled by these various bureaus because the French, unlike the English, have not acquired the habit of leaving details to be settled by the men who are on the ground. The tendency is to centralize everything in Paris

THE MINISTRY OF THE COLONIES.

For various reasons the French have been less successful than the English in their rôle as colonizers. This is partly due to the good fortune which enabled the English, by their control of the seas, to take the best colonies of France away from her. But it is also because the French are not a migratory race. France has had no overpopulation, no surplus with which to people her dependencies. Moreover, the Frenchman loves his native soil, and well he may, for there is no portion of the earth's surface more blest by nature than the tract that lies between the Rhine and the Pyrenees. Give a young Frenchman the assurance of a mod-

FRANCE AS A COLONIZER.

erate income and he will rarely leave France for the chance of making a fortune elsewhere. The fairly equal distribution of property among the French people, moreover, has deprived France of that venturesome element, the penniless younger sons, who have played so large a part in the upbuilding of Greater Britain. Finally, something is attributable to the rigid economic policy which France has applied to her dependencies. The doctrine of the open door has produced no rhapsodies in the French colonial office. The colonies have been discouraged from entering into close commercial relations with foreign countries. France has not found it easy to supply them with sufficient capital or initiative; nor has the French government been willing that other countries should do this.

THE IDEAL OF SECURITY.

The keynote of French policy towards the rest of the world is *security*. The overbearing, sword-rattling, threatening France of Bonapartist days is no more. Here is a nation that has had enough of invasion, carnage, and devastation,— whose strongest desire is to be secure from any more of it. Frenchmen love their own land with more than a simple patriotism. It is the patriotism of one great family, numbering forty millions, with a philosophy of national life. So France will sacrifice much for the security of this sun-blessed domain. But there are limits beyond which no government of hers would dare to go. One of these is set by her overseas interests, especially in Northern Africa. France, like Britain, is deeply concerned about the control of the Mediterranean. For her military man-power must be supplemented by troops from Algeria in time of war, and such transportation might be precarious if both Italy and Spain were her enemies. Likewise France is equally concerned with Britain in keeping the Mediterranean open for communication with the east by way of Suez, for she has valuable interests in Madagascar and Indo-China. These and other considerations tend to bring the French and British together. The relations of France and Russia are also traditionally close, for these two countries have no serious clash of interests in any part of the world. There is no French conception of international security which does not look towards cordial relations with both Britain and Russia.

The most recent book in this field is Stephen H. Roberts, *History of French Colonial Policy, 1870–1925* (2 vols., London, 1929). Other useful volumes are A. Megglé, *Le domaine colonial de la France; ses ressources et ses besoins* (Paris,

1922), V. Beauregard, *L'empire colonial de France* (Paris, 1924), Albert Duchêne, *La politique colonial de la France* (Paris, 1928), and G. Hardy, *Histoire de la colonisation française* (Paris, 1928).

Mention may also be made of V. Picquet, *Colonisation française* (Paris, 1912), Albert Sarraut, *Mise en valeur des colonies française* (Paris, 1923), A. Girault, *The Colonial Policy of France* (Oxford, 1917), and Constant Southworth, *The French Colonial Venture* (London, 1931).

The more important laws and decrees relating to the French colonies are given in A. Mérignhac, *Précis de législation et d'économie coloniale* (Paris, 1924), as well as in René Foignet, *Manuel élémentaire de législation coloniale* (Paris, 1924), and in Henri Mariol, *Abrégée de législation coloniale* (Paris, 1925). *L'annuaire colonial*, published in Paris, gives up-to-date information and statistics.

CHAPTER XXXIII

THE OLD EMPIRE AND ITS COLLAPSE

The old political science was mistaken when it regarded the army as nothing but the servant of diplomacy, and gave it only a subordinate place in its political system. . . . If power, within and without, is the very essence of the state, then the organization of the army must be one of the first cares of the constitution. . . . It is the army which supports the state.—*Heinrich von Treitschke.*

What was generally supposed to be the strongest and most efficient government in the world went down with a crash in the first week of November, 1918. The collapse, so quick and complete, astounded everyone. The rest of the world looked at the broken idol and wondered why a government could have been so weak when it seemed so strong. How did the pre-war German empire manage for so many years to maintain such a show of vitality while developing internal deterioration? The answer involves some knowledge of the circumstances under which the empire came into being and of the governmental mechanism which it used.

A GREAT COLLAPSE AND ITS LESSONS.

The German empire which came to an end in 1918 was, as Bismarck once said, a creation of "blood and iron." It was the descendant, none too direct, of the Holy Roman Empire which played such a striking part in mediaeval history. This imperial institution was a strange mosaic of kingdoms, principalities, dukedoms, bishoprics, and what not, stretching down the axis of Europe from the Baltic to the Mediterranean. Everyone, of course, has read the comment of Voltaire that it was neither holy, nor Roman, nor an empire. It was not holy because its head was a civilian; it was not Roman but largely German; and it was not an empire because it possessed no imperial unity. Its principal service, or disservice, during the many centuries of its existence, was to keep Germany and Italy from becoming unified nations.[1]

ORIGINS: THE HOLY ROMAN EMPIRE.

[1] The Holy Roman Empire continued to exist, in form at least, until 1806 when Napoleon Bonaparte erased it from the political map of Europe.

Now among the various principalities which made up this wraith of a federal empire (which Germans now posthumously designate as the First Reich) was the "mark" or principality of Brandenburg, ruled by the House of Hohenzollern. It was a small tract, devoid of advantages in the way of natural resources, and without access to the sea. In due course, however, this little principality began to grow in size and strength; its name was changed to Prussia; new territories were acquired, and Prussia eventually became, in the eighteenth century, one of the leading European powers. Then came the Napoleonic Wars, with a disastrous defeat for the Prussians at Jena (1806) and the subsequent overthrow of Bonapartist power, with Prussian help, at Waterloo.

BRANDENBURG AND PRUSSIA.

Being among the victorious allies, Prussia obtained some important territorial acquisitions at the close of the Napoleonic Wars. It was likewise arranged that all the German states, including both Prussia and Austria, should be joined together in a league or federation. This union somewhat resembled the confederation of states which existed in America during the ten years prior to the framing of the constitution. And like the latter it proved a failure. But the old German federation continued in existence for about fifty years when it was brought to an end by an open rupture between Austria and Prussia, its two principal members. These two states went to war in 1866 and the Prussians were quickly victorious. Thereupon Prussia ousted Austria from all part in German affairs and proceeded to form a new federation under her own undivided leadership. It was intended to include all the German states except Austria in this union, but this did not turn out to be practicable at the moment. Four southern states (Bavaria, Baden, Hesse, and Württemberg) had to be left out.

THE OLD GERMAN FEDERATION (1815–1867).

So the North German federation was formed under Prussian sponsorship in 1867 and provided with a federal constitution. This constitution was largely the work of Otto von Bismarck, Prussian prime minister, who is said to have dictated the first draft of it in a single afternoon. The king of Prussia became ex officio president of the federation with Bismarck as his chancellor. But before the new order could become well established the Franco-Prussian War of 1870 intervened. This short struggle resulted in a decisive Prussian victory, whereupon the four South German states were brought into the federation. Their incoming was facilitated by the fact that during the years im-

THE NORTH GERMAN FEDERATION (1867–1871).

mediately preceding the war they had joined with the northern confederation in a *Zollverein* or customs union. With these new members added the union now became the German empire (1871), but the constitution of 1867 was retained with a few minor changes.

The German empire which came into being in 1871 was made up of twenty-five kingdoms, grand duchies, duchies, principalities, and free cities.[1] Of these Prussia was by far the largest both in area and in population, being larger than the other twenty-four states of the empire put together. It was not, therefore, a federation of equals. To use a well-known metaphor it was a compact between "a lion, a half-dozen foxes, and a score of mice." Although federal in form, this "Second Reich" was not a true federation. Prussia governed the country with a certain amount of reluctant deference to the wishes of the other states.

THE GERMAN EMPIRE (1871–1918)

In one sense, however, the Second Reich was definitely federal, for it had a constitution which divided the field of governmental powers between the imperial and the state authorities. And the constitution was generous in the amount of authority which it left to the various states.[2] The imperial authorities were given jurisdiction over such matters as foreign relations, foreign trade, the army and navy, indirect taxation and customs duties, borrowing, railroads, canals, the postal and telegraph services, currency and banking, patents and copyrights, weights and measures, the regulation of industry, censorship, and so on. In addition the entire field of criminal and civil lawmaking, and of judicial procedure, was turned over to the imperial parliament. On the other hand the actual administration of these functions was largely (though by no means entirely) devolved upon the states and the latter were given many important independent powers.

ONE OF ITS PECULIARITIES.

The chief executive official of the old empire was the emperor.

[1] There were four kingdoms—Prussia, Bavaria, Saxony, and Württemberg; six grand duchies—Baden, Hesse, Mecklenburg-Strelitz, Mecklenburg-Schwerin, Saxe Weimar, and Oldenburg; five duchies—Brunswick, Saxe-Meiningen, Anhalt, Saxe-Coburg, and Saxe-Altenburg; seven principalities—Waldeck, Lippe, Schwarzburg-Rodolstadt, Schwarzburg-Sonderhausen, Reuss (elder line), Reuss (younger line), Schaumberg-Lippe; and three free cities—Hamburg, Lübeck, and Bremen. In addition there was the "imperial territory" of Alsace-Lorraine.

[2] Bavaria was given some special privileges, in order to bring her into the empire, while Prussia was placed under the disability of having only seventeen votes in the Bundesrat or Upper House although her population entitled her to a much larger quota.

His title was German emperor, not emperor of Germany, and he occupied the imperial post by virtue of his being king of Prussia. The two titles went together. No imperial throne was set up, no imperial salary provided, no imperial palaces placed at the emperor's disposal. His salary, palaces, and throne came to him as king of Prussia. As king of Prussia, of course, he was a royal sovereign over three fifths of the empire, hence his authority was much more extensive there than in the rest of it. As emperor he had important executive powers in only two fields of government—national defense and foreign relations. As commander-in-chief he supervised the organization of the German army and navy in time of peace, with absolute authority over it in time of war. Likewise he appointed the German ambassadors to other countries, gave them their instructions, received ambassadors from abroad, and exercised a general supervision over all diplomatic negotiations. In this field he possessed the same powers that belong to the President of the United States. But he had a further power which the President does not possess—namely, that of "entering into alliances and treaties with foreign states." This he had the right to do without consulting either branch of the German parliament unless the treaty happened to require parliamentary legislation for carrying its provisions into effect.

THE EMPEROR.

HIS POWERS.

It was in these two fields of government, national defense and foreign relations, that the emperor found scope for the exercise of his personal influence. In spite of a promise made to his chancellor in 1908 that he would act on the latter's advice the emperor's initiative continued to be both direct and decisive. And it was here that William II, third of the emperors, made his most serious blunders. The collapse of the imperial power in 1918 was fundamentally due to a long succession of blunders made by him in military, naval, and diplomatic policy—the domains of government in which the constitution vested him with full power.

BLUNDERS IN THESE TWO FIELDS.

During the years 1871–1918 Germany had three emperors. The first of these, William I, had been king of Prussia since 1860. Born in 1797 he was seventy-four years old when he assumed his new imperial post in 1871; nevertheless he held the throne until 1888.[1] On his death the Prussian throne (and with it the imperial title) passed to his eldest son,

THE THREE EMPERORS: WILLIAM I (1871–1888).

[1] He had the remarkable experience of entering Paris in 1815 after the over-

Frederick. But Frederick was seriously ill at the time of his accession and died within a few months. Thereupon Germany went under the leadership of her third kaiser, who took the title of William II. In addition to being young, the new emperor was known to be impulsive, ambitious, and self-confident. From his accession to the outbreak of the World War he tried to make himself a dominating influence in all branches of imperial policy. In point of energy and self-reliance he was not inferior to some of his ancestors, but he lacked their shrewdness. His political views were reactionary and he openly avowed himself a monarch by divine right. In the field of diplomacy his ineptitude was phenomenal, and it became more so as he grew older. When he came to the throne, William II was an enigma, and he has remained a good deal of a puzzle, both on the throne and in exile, to this day.

FREDERICK (1888).

WILLIAM II (1888–1918).

The imperial constitution of 1871–1918 made no provision for a cabinet. The statesman Bismarck, who was the author of this constitution, desired to be the emperor's sole adviser. What he wanted was a one-man cabinet. He was ready to have subordinates but not colleagues. So he provided in the constitution that there should be a chancellor, appointed by the emperor to countersign the imperial orders and thereby become responsible for them—but not responsible to parliament. The constitutional responsibility of the chancellor was to the emperor alone. Students of government ought to know something about this remarkable man, who rose in ten years from relative obscurity to be the author of the empire's constitution, its first chancellor, and a controlling figure in its politics for nearly a score of years.

THE OFFICE OF CHANCELLOR.

Otto von Bismarck was born in 1815, the son of a Prussian landowner. He received a good education, entered political life while still a young man, and soon attracted attention by his vigorous support of the crown. Later he secured a place in the diplomatic service and finally became Prussian minister to France. He was occupying this post when William I summoned him from Paris in 1862, and appointed him prime minister of Prussia. Thereupon he proceeded to put into practice a political philosophy which may be summed up in this way: "The

BISMARCK, THE FIRST CHANCELLOR.

throw of Napoleon I at Waterloo, and again entering the city at the head of his troops in 1871 after the collapse of Napoleon III.

German states must be welded together into a closer union under Prussia's leadership. To accomplish this, Austria must be ejected from all part in German affairs. This will mean wars, and to win wars Prussia must have an all-conquering army. If parliament will not help build up such an army, then parliament must be sacrificed."

This objective he pursued relentlessly without a quiver of conscience although it took Prussia into three wars before it was reached. Within a period of seven years he dictated his own terms to Denmark, Austria, and France. Meanwhile he drafted a constitution, organized a new confederation, and transformed it into an empire. Bismarck had no scruples in dealing with his opponents, and his ethical standards as applied to diplomacy left something to be desired. Hence his critics called him a Machiavelli—one to whom the end justified the means—yet Bismarck was a devoutly religious man, a fundamentalist in his beliefs, and patriotism was part of his religion. "One war at a time" was his maxim. So he kept his wars localized. He cajoled France while he dealt with Austria. Then he humored Austria while he squared accounts with France. All the while he cultivated the friendship of Russia and scrupulously refrained from antagonizing England. He would never have let his country get into a conflict with half the world as it did in 1914.

HIS DEPARTURE FROM OFFICE.

The iron Pomeranian ceased to be chancellor of the empire and prime minister of Prussia in 1890. William II had come to the throne two years earlier. A difference of opinion arose between the two and the chancellor submitted his resignation. Much to Bismarck's surprise the resignation was promptly accepted. The ex-chancellor did not take his dismissal in good part but became a severe critic of his imperial sovereign, thus creating a situation that was embarrassing to all concerned. He died in 1898, but before his death a reconciliation had taken place. After Bismarck's departure from office William II virtually became his own chancellor although various statesmen held the title and performed the routine duties, including the pacification of parliament.

THE IMPERIAL PARLIAMENT:

For the constitution of 1871 made provision for a German parliament, with an upper house, or Bundesrat, and a lower house, or Reichstag. The first was assumed to represent the states and the second the people. The Bundesrat had fifty-eight members representing Prussia, Bavaria, Saxony, and the other German states—not equally (as in the Senate

of the United States) nor in exact ratio to population. The basis of representation was a compromise between the two. Members of the Bundesrat were appointed by the heads of their respective states for no fixed terms and could be recalled at will. They voted in accordance with instructions from home, and for that reason every state-delegation in the Bundesrat always voted as a unit. Any member of the delegation could cast his state's vote; it was not essential that the other members of the delegation be present. The Bundesrat, from this point of view, was an assemblage of ambassadors rather than a body of senators.

1. THE BUNDESRAT.

The Reichstag, on the other hand, was a body of nearly four hundred members elected from single-member constituencies on the basis of manhood suffrage. It was supposed to have an equal share in lawmaking, but the Bundesrat became the dominating branch of the imperial parliament. Nearly all important bills originated there. The Reichstag, moreover, could be dissolved at any time by the emperor with the Bundesrat's consent, and on several occasions it was dissolved when it refused to concur with the latter on important measures of legislation. But the chief reason for the Reichstag's failure to become a powerful factor in imperial policy was the absence of any means by which it could control the executive. The chancellor was not responsible to it, nor could his subordinates be called to account by its members.

2. THE REICHSTAG.

Having no real control over the policy of the executive, the Reichstag became a chamber of echoes. It received bills from the Bundesrat, went through the gesture of referring them to committees, debated them, amended and compromised when it could, and in the end gave its assent. When it proved obdurate on any important measure a threat of dissolution could be used to mellow its attitude. No single political party ever managed to obtain a clear majority in the Reichstag, and the chancellors were able to play off one faction against another. Yet the old Reichstag had all the externals of a democratic chamber. Its members were chosen by manhood suffrage and no law could be enacted without their consent. But its activities were largely negative and it failed to exemplify the principle of popular sovereignty.

A CHAMBER OF ECHOES.

Germany, as Bismarck once said, "owed more to her armies than to her parliaments." The first chancellor gave up the helm in 1890, but his maxims of politics did not depart with him. "Ballots are

yours, but bullets are mine," said William II to his people after Bismarck had gone. The army and navy continued to be the first care of the imperial authorities. The task of bringing the armed forces of the empire to the highest pitch of strength and efficiency seemed to be vastly more important than that of making ministers responsible or developing a sound political spirit among the people. War was asserted by some German philosophers to be a biological necessity, and the only way of applying the law of the survival of the fittest among nations. Germany must have "a place in the sun"; her only alternatives were *Weltmacht oder Niedergang*, so the people were assured. The officers of her armed forces, at mess, drank toasts "to the day"—when they would meet the French army on land and the British navy at sea. Thus the force complex dominated every phase of German life during the years preceding the World War.

THE MILITARY COMPLEX.

Three reasons have dictated the outline of imperial government which has been given in the foregoing pages. In the first place, as has been said, the student of government should not be oblivious to the lesson that a government may be outwardly strong while it is inwardly weak. He should learn not to be deceived by the appearance of things. No matter how vigorous a government may seem to be, it is insecure unless it rests upon a consciousness of consent among its people. In the second place no one can understand the government of the Third Reich, as it is conducted today, without some knowledge of its imperial predecessor and some appreciation of the old political psychology. For it is quite apparent that the German national temper has undergone no substantial change. The doctrine of rulership by fear and expansion by force has lost none of its strength in the Germany of today.[1] The old empire represented a step, although not a complete one, in the unification of Germany which is now a first commandment in the decalogue of Hitlerism. Finally, some of the political tenets of the old régime have been carried over into the new. The chief of state (now known as *Der Führer*) is his own chancellor, as the exiled emperor virtually was during the latter portion of his reign. More attention is being given to the army than to parliaments, and more faith is being

THE LESSONS OF THE OLD RÉGIME.

[1] While the philosophy of force has played a large rôle in Germany, it is not certain that the Germans really worship force more than other European peoples do. It may be merely that they owe more to force in the past and that, unlike some of their neighbors, they are less adept in garnishing their gospel of force with beatitudes.

placed in munitions than in ministries. The Reichstag of today is merely the still further emaciated Reichstag of a quarter century ago.

NEARING THE END.

The German empire of William II came to an end on November 9, 1918. During the earlier part of the war the German victories aroused nation-wide enthusiasm, and in the ardor of the moment nobody gave thought to questions of executive irresponsibility or the impotence of parliament. The military leaders completely dominated the entire government until signs of war weariness began to appear and a spirit of political unrest began to manifest itself. At first the authorities undertook to silence all such mutterings with a stern hand. But it gradually became apparent that repressive tactics would not avail, for in spite of glowing official reports and high-powered propaganda the restlessness among the people kept increasing. Thereupon the emperor decided that it would be wise to apply a sedative by hurrying through a revision of the constitution.

CONCESSIONS CAME TOO LATE.

But the hour of concession had been too long delayed. The Socialists in the Reichstag would not now be satisfied with anything short of a complete change of government and their demands found an unexpected measure of aggressive support among the people. One of President Wilson's notes (October 23, 1918), in answer to the German government's request for an armistice, suggested that Germany could expect no leniency from her foes unless the old scheme of autocratic government was abandoned. Then came the great débâcle. While the negotiations for an armistice were proceeding, the German fleet mutinied; the mutiny spread to the shore; and presently the disorder reached Berlin where the government did not dare attempt its suppression. Meanwhile the emperor had taken refuge at army headquarters, leaving the chancellor in control of affairs at the capital. The latter, on November 9, 1918, announced the emperor's abdication and turned his own office over to Friedrich Ebert, a leader of the Social Democrats, who proceeded to set up a provisional republican government. The emperor thereupon fled to Holland with the crown prince at his heels, while various other distinguished personages scurried for safety to Switzerland or Sweden. All over the country the various state dynasties toppled in quick succession. Thus Germany changed in a few days, and almost without bloodshed, from a military empire to a people's republic.

Constitutional History. Of the many books which deal with German constitutional history in its earlier stages the most useful for general reference are Heinrich von Treitschke, *Deutsche Geschichte im Neunzehnten Jahrhundert* (translated into English by E. and C. Paul under the title *History of Germany in the Nineteenth Century*, 7 vols., London, 1916–1920), and H. von Sybel, *Begrundung des deutschen Reiches* (also translated as *The Founding of the German Empire*, 7 vols., New York, 1898). A less detailed account, covering a longer period, is given in Ernest Henderson, *Short History of Germany* (New York, 1916), in J. Holland Rose, *Political History of Germany in the Nineteenth Century* (Manchester, 1912), and in G. P. Gooch, *Germany* (New York, 1925). Mention should be also made of Sidney B. Fay, *The Rise of Brandenburg-Prussia to 1786* (New York, 1937), W. H. Dawson, *Evolution of Modern Germany* (London, 1909), and R. H. Fife, *The German Empire between Two Wars* (London, 1916).

The Second Reich. For the structure and workings of the imperial government during the years 1871–1918 the best source of detailed information is that in Paul Laband's *Das Staatsrecht des deutschen Reiches* (4 vols., Tübingen, 1901), of which there is a translation into French but not into English. A good brief survey may be found in A. Lawrence Lowell, *Greater European Governments* (Cambridge, Mass., 1918). Mention should also be made of B. E. Howard, *The German Empire* (New York, 1906), and F. Krüger, *Government and Politics of the German Empire* (New York, 1915). The last-named book is strongly partisan but contains a useful bibliography. An English translation of the old constitution may be found in W. F. Dodd, *Modern Constitutions* (2 vols., Chicago, 1908).

Bismarck. The most useful short biography of Bismarck is by J. W. Headlam (New York, 1899), but the iron chancellor also published two volumes of *Reflections and Reminiscences* prior to his death. A third volume was withheld from publication until after the close of the World War. Mention should also be made of Emil Ludwig's *Bismarck* (New York, 1929).

The Collapse of 1918. Good accounts of the events which preceded and accompanied the collapse of the Second Reich in 1918 are given in A. Rosenberg, *The Birth of the German Republic* (New York, 1931), M. Baumont, *The Fall of the Kaiser* (New York, 1931), H. G. Daniels, *The Rise of the German Republic* (London, 1927), R. H. Lutz, *The Fall of the German Empire, 1914–1918* (2 vols., Stanford University, Calif., 1932), and the same author's *Causes of the German Collapse in 1918* (Stanford University, 1934). This last-named volume contains English translations of important German documents. Mention should also be made of E. Bevan, *German Social Democracy during the War* (New York, 1919), Miles Bouton, *And the Kaiser Abdicates* (New Haven, 1921), and Hans Delbrück, *Government and the Will of the People* (New York, 1923).

CHAPTER XXXIV

THE REPUBLICAN INTERLUDE

But, oppression by your mock-superiors shaken off, the grand problem yet remains to solve: that of finding government by your real-superiors. Alas! how shall we ever learn the solution of that?—*Thomas Carlyle.*

The old German government having collapsed, it became necessary to create a provisional administration. Ebert, the new chancellor, hastily formed an emergency council of six members drawn from the two branches of the Socialist party known as Social Democrats and Independent Socialists. A proclamation announced that a constitutional convention would be elected to settle the future government of the country; meanwhile the council of six commissioners, under Ebert's leadership, was to manage affairs without a constitution. It was this provisional government that authorized the signing of the armistice.

THE NEW PROVISIONAL GOVERNMENT.

But no sooner had hostilities ended than the council of six found itself bady divided. The three Social Democrats were content with the political revolution as an accomplished fact; the three Independent Socialists regarded the work as only half completed; they wanted an economic revolution also. Meanwhile, as in Russia, the organization of workers' and soldiers' councils went on throughout Germany, and each faction in the council of six tried to get the support of these bodies. In the end the Social Democrats succeeded, and the Independents thereupon withdrew from the government. Their withdrawal was the signal for Communist disorders which, however, were quickly suppressed.

A SCHISM IN THE COUNCIL.

In the early days of 1919 more than four hundred delegates to a constitutional convention, or constituent assembly, were elected by universal suffrage in accordance with the principles of proportional representation. And in February they assembled at Weimar to frame a constitution for the new German Republic. The delegates met at Weimar for the sentimental reason that this city was associated with the real cultural

THE WEIMAR ASSEMBLY.

glories of the German people, and for the practical reason that in Berlin their work might be interrupted by Communist demonstrations.

The delegates got to work quickly and appointed a steering committee to make the draft of a constitution. This committee was so constituted as to give representation to the various party groups in the assembly and to the various geographical divisions of the country. Accordingly, differences of political opinion soon developed among its members and many compromises were found necessary. But in the end, after much trimming and touching up, a lengthy document (which later became known as the Weimar constitution) was agreed upon by a majority of the convention in the summer of 1919. It went into effect at once, without being submitted to a vote of the German people.[1]

ITS METHODS OF WORK.

At the outset the new constitution was regarded as reasonably satisfactory by the moderate party groups in Germany, that is, by all except the Monarchists and Nationalists at one extreme and by the Independent Socialists and Communists at the other. In many ways it was a remarkable production, embodying numerous striking innovations, and as such it evoked the interest of political scientists throughout the world. A long document, ten times longer than the Constitution of the United States, the Weimar constitution endeavored to combine a new political philosophy with a very old one. Its framers retained from the old constitution much of its imperial mechanism while engrafting upon it various institutions of the new post-war democracy.[2]

GENERAL NATURE OF THE NEW CONSTITUTION.

For example, it continued the federal type of governmental organization. Powers were divided between the Reich and the states, as during the imperial régime, but the central government was greatly strengthened.[3] The center of gravity was shifted from the states to the nation. The number

ITS FEDERAL FORM.

[1] The most prominent figure in the convention, and the one chiefly responsible for the initial draft of the Weimar constitution, was Dr. Hugo Preuss, a Jewish professor of public law. For the later significance of this racial affiliation see *below*, pp. 633–637. His book on the constitution, entitled *Um die Reichsverfassung von Weimar* (Berlin, 1924), is of much interest.

[2] An English translation may be found in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922), pp. 167–212.

[3] The term *Reich* has usually been translated into English as *empire*. That is not an accurate translation. *Deutsches Reich* does not mean German Empire, but German Commonwealth, hence the term is quite consistent with a republican form of government.

of states was reduced from twenty-five to eighteen [1] and their powers were so greatly curtailed as to raise the question whether the Weimar constitution established a federal system in reality or only in form.[2] At any rate the prediction was made that if the government of the Reich should ever proceed to exercise all the authority vested in it by the new constitution there would be very little left to the states. And so it turned out. State rights in Germany were virtually abolished before the Weimar constitution went into the discard with them.

WHY IT MERITS STUDY: 1. ITS DEMOCRATIC IDEOLOGY.

The constitution of 1919, although it did not prove to be long-lived, deserves to have its principal features explained here, for two reasons. In the first place it embodied the democratic ideology which surged over most of Europe immediately after the war. It contained all the modern devices of democratic government—universal suffrage, proportional representation, initiative and referendum, the recall, ministerial responsibility and a bill of rights. It marked an attempt to transform Germany, at one stroke, from an imperial autocracy to a democratic republic. And like most ambitious enterprises of this nature it proved abortive because it went too far and too fast.

2. ITS RELATION TO WHAT CAME AFTER IT.

In the second place, the Weimar constitution deserves attention from the student of government because it is only through a study of its provisions, weaknesses, and workings that one can get an understanding of the stepping-stones on which Hitler rose to power. The Third Reich could not have been established, in its present form at any rate, with-

[1] The old empire was made up of twenty-five states (including three free cities), together with the imperial territory of Alsace-Lorraine which was lost to France as a result of the war. In 1919 the two small states known as Reuss (older line) and Reuss (younger line) united into the "People's State of Reuss." A year later seven states, namely, Reuss, Saxe-Weimar-Eisenach, Saxe-Altenburg, Schwarzberg-Rudolstadt, Schwarzburg-Sonderhausen, Saxe-Meiningen, and Saxe-Gotha were consolidated into the republic of Thuringia. A portion of the last-named state (Coburg) was joined with Bavaria. This makes only fifteen states, namely, Prussia, Bavaria, Saxony, Württemberg, Baden, Brunswick, Oldenburg, Anhalt, Thuringia, Hesse, Mecklenburg-Strelitz, Mecklenburg-Schwerin, Lippe, Schaumberg-Lippe, Waldeck, together with the three Free Cities of Bremen, Hamburg, and Lübeck. To these fifteen, Austria has now been added.

[2] By the provisions of the Weimar constitution the financial powers of the Reich were so greatly widened as to deprive the states of almost their entire fiscal autonomy. Presently the state railroads were unified under the control of the Reich. Thus the urge toward administrative centralization started immediately after the war.

out the various provocations which engendered nation-wide discontent during the republican interlude under the Weimar constitution. This is not to imply that the weak features of this constitution were the sole inspiration of Hitlerism; but it is probable that they contributed greatly to the outcome. For the constitution of 1919 provided the German people with a scheme of government under which a forceful, consistent national policy proved to be impossible.

THE WEIMAR CONSTITUTION

THE "REICHSPRÄSIDENT"

Under the Weimar constitution the chief executive power was vested in a president, elected by direct vote of the people for a seven-year term, with no restrictions upon his eligibility to reëlection. Friedrich Ebert, who had been made provisional President, was kept in office until his death in 1925. Then a presidential election was held and Field Marshal Paul von Hindenburg was chosen to the post. At the expiry of his term in 1932 he was reëlected, despite the fact that he was eighty-five years of age, and he died in office two years later. During the fifteen years of the republican interlude, therefore, Germany had only two presidents. Provision was made in the constitution for the recall of the President by popular vote, on the initiative of a two thirds vote in the Reichstag, but this provision was never used.

HIS GENERAL POWERS.

As for general powers, the President was given an imposing list, but his authority was emasculated by a qualifying provision that all his actions should "require for their validity the countersignature of the chancellor or the appropriate minister." And this was followed by the stipulation that by giving such countersignature the chancellor or minister would assume responsibility to the Reichstag. Thus the constitution sought to establish the principle of ministerial responsibility as it existed in the French Republic. Incidentally, in this connection, it may be mentioned that the Weimar convention borrowed a good deal from France, but virtually nothing at all from the United States. Many references to the American plan of republican government were made on the floor of the convention, but very few of them were favorable ones.

THE EMERGENCY POWER.

In addition to such usual executive powers as the right to execute the laws, to make appointments, and to conduct foreign relations, the President was given a special power which, with the concurrence of the chancellor, would

enable him to deal firmly with any grave national emergency. This extraordinary power was contained in Article 48 of the constitution which provided, in part, as follows:

> "If public safety and order in the Reich are materially disturbed or endangered, the President may take the necessary measures to restore them, and may do this, if need be, by using the armed forces."

Likewise the President was given, by this same article, authority to suspend various fundamental rights enumerated in the constitution. But in all cases he was required to inform the Reichstag of decrees issued by him under this emergency provision, and the latter could then abrogate them.

Now the dictatorial possibilities which lurked in this provision were not fully realized by those who framed it. The intent, of course, was to provide the chief executive with an emergency power which would be used only in a grave national crisis, involving danger to the safety of the Republic. But it did not work out that way. Almost from the outset Article 48 was utilized by the President and the ministry to disregard the regular lawmaking bodies and govern the country by the issue of executive decrees. This was done by conjuring up one emergency after another. During the six years 1919–1925 over 130 decrees were issued under the terms of Article 48, but during the six years 1925–1931, when the political situation in Germany became somewhat more stabilized, fewer than twenty emergency decrees were issued. In 1930, however, the Bruening ministry put through its entire financial program by decree, whereupon the Reichstag passed a resolution demanding abrogation. Bruening then appealed to President Hindenburg who dissolved the Reichstag and ordered a new election. In other words the Reichstag found that it could not exercise its constitutional powers without imperiling its own existence.

A SIGNIFICANT LESSON FROM IT.

The experience of Germany in connection with Article 48 of the Weimar constitution provides the student of comparative government with an illuminating lesson. It demonstrates the danger of entrusting any national executive with praetorian powers, even for emergency use. In countries where disorders endangering the public safety are likely to arise it is obviously desirable that there shall be some competent authority to deal with such situations promptly and decisively, without waiting for the tardy action of legislative bodies. But to give the chief executive a right to determine when the situation is

an emergency one, and to act upon his own discretion in dealing with it—that is an arrangement which embodies not only the possibilities of dictatorship but an encouragement to it. The emergency decrees of the German President were thought to be well safeguarded because their exercise required the countersignature of the chancellor; but this restriction proved to be of little avail because the President could remove one chancellor and install another. And the latter could countersign the order of removal as well as his own appointment! Likewise although the President's emergency decrees could be abrogated by action of the Reichstag, the latter found itself dissolved when it attempted to enforce its power of abrogation.

GOVERNMENT BY PRESIDENTIAL DECREE.

At any rate the German Republic presently found itself being governed largely by one article of the constitution to the disregard of all the rest. Presidential government, for the most part, replaced parliamentary government. The German courts upheld this situation as constitutional by holding that the President and his ministry were the ones to judge whether or not a serious danger to public safety and order was present.[1] The general intent of the Weimar constitution was to lodge the center of political gravity in the Reichstag; the outcome shifted it to the executive branch of the government.

THE MINISTRY.

As for the ministry, which supported the President in carrying on the government under the emergency clause, its size was not fixed by the constitution. The President merely chose a chancellor and the chancellor, in turn, selected such ministers as he thought desirable. Usually there were ten or twelve of them. Each took charge of a department—finance, foreign affairs, defense, justice, economic affairs, and so forth. In addition the ministry as a whole formulated the general policy of the government and presented measures to the Reichstag for adoption.

THE GERMAN PARLIAMENT:

1. THE REICHSTAG.

The Reichstag, under the provisions of the Weimar constitution, was composed of members elected for a four-year term by universal suffrage under a system of proportional representation. For electoral purposes the country was divided into thirty-five districts, each of which chose one member for every 60,000 votes cast within the district at the election. Thus the size of the House was not fixed until

[1] This met with public approval because internal chaos seemed to be the only alternative. The composition of the German parliament made the obtaining of essential legislation virtually impossible.

after the election had taken place. This procedure represented an innovation in electoral methods, and like most novelties in the art of government proved to be unsatisfactory. Its purpose was to assure every political party, however small, its proportional representation in the Reichstag. What it did was to encourage the division of the voters into numerous political parties so that no single party ever obtained a majority of seats in the Reichstag.[1]

ITS FAILURE TO FUNCTION SUCCESSFULLY.

The system of proportional representation which was used in Germany during the republican régime was not the only feature which contributed to the relative impotence of this legislative chamber. The Reichstag's own methods of procedure were also, in part, responsible. All important measures, when presented by the ministry, were not only referred to committees but were considered by the members at party caucuses. Frequently two or more party groups met in joint caucus, and this was especially true of the bloc which supported the ministry for the time being. Thus it came to pass that most of the Reichstag's decisions were controlled by the action or inaction of party groups and did not eventuate from an open debate on the floor. Votes in the House were, in most instances, merely ratifications of what had already been decided by party combinations behind closed doors. This method of doing things facilitated political trading and had an adverse reaction upon the public mind.

2. THE REICHSRAT.

The Weimar constitution provided that "national laws are enacted by the Reichstag." The concurrence of an upper chamber was not made necessary, as in Great Britain, France, and the United States. Yet there was an upper chamber, established by the constitution. Known as the Reichsrat it was made up of ministerial delegates from the fifteen German

[1] As for the detailed procedure, each political party nominated a list of candidates for each district, another list of candidates for each of seventeen unions into which the districts were combined (for the purpose indicated below), and a national list for the whole country. The voters marked their preferences for lists, not for individual candidates. Then, when the ballots were counted, each district was allotted one seat for every 60,000 polled votes. If the list of the Social Democrats received 182,000 votes in any district, the first three candidates on that list were declared elected.

But that was only the first step. There would be surplus votes, or fractions of 60,000 left over. So the surplus votes for each party list in two or more districts were combined for the choice of members from the top of its union list. If, when so combined, the party's surplus exceeded 60,000 it obtained a member. Finally, the surplus votes in all the unions were combined in the same way for the choice of members from the top of the national list.

states and free cities, roughly according to population.[1] Each of these sent one or more members of its own state-ministry to represent it. Thus the members of the Reichsrat were ex officio ambassadors to Berlin from their own communities. It was as though Iowa were represented in the Senate of the United States by her own governor, lieutenant governor, and state treasurer, while New York could send not only such officials but a dozen others as well. The Reichsrat was intended to be a federal council, representing the state governments.

When a measure passed the Reichstag, however, it did not go to the Reichsrat for concurrence. Instead it was sent directly to the President for promulgation. But meanwhile the upper chamber might by resolution file objections with the ministry in which case the measure had to be referred back to the Reichstag for reconsideration. If the latter declined to reconsider, the President could either withhold the measure from promulgation indefinitely or submit the issue to the people for decision at an election. But he was required to either promulgate it or submit the question to a referendum if the Reichstag, in its reconsideration, had stood its ground by a two thirds vote. Thus the Reichsrat had merely a suspensive veto, which could be overridden by a two thirds vote of the Reichstag with the President assenting, or by the people in any case.[2] Provision was also made for a referendum on any law (with certain specified exceptions) if a petition signed by five per cent of the qualified voters was presented asking for it.

THE PROCESS OF LAW-MAKING.

Two or three other features of government established by the con-

[1] It was provided, however, that every German state or city, however small, should have at least one representative in the Reichsrat and that no state, however large, might control more than two fifths of the membership.

[2] This curious veto arrangement deserves a place in the museum of discarded governmental devices. It may be more clearly explained as follows:

When the Reichstag had passed a measure by majority vote, and the Reichsrat had filed objections to it, the bill went back to the Reichstag and the latter might then:

(a) amend the bill to meet the objections, in which case it was promulgated and became a law;
(b) disapprove the Reichsrat's objections by less than a two thirds vote, in which case the President could refer the issue to the people, or, if he failed to do this, the bill did not become a law;
(c) disapprove the Reichsrat's objections by a two thirds vote, in which case the President was required either to promulgate the bill and thus give it effect as a law, or else refer the issue to the people for their decision.

stitution of 1919 deserve to be mentioned in passing. One of these is its bill of rights. In some instances its terminology seems to have been borrowed almost literally from the Constitution of the United States—for example, the provision that "no ex post facto law shall be passed," that "private property must not be taken for public use except by authority of law" and with just compensation (*angemessene Entschädigung*). The Weimar bill of rights, however, went farther in some respects than the American. It forbade, for example, the maintenance of private schools as a substitute for public schools. It declared that "the house of every German is his sanctuary and is inviolable"—a Teutonic rendition of the old common-law adage that "an Englishman's house is his castle."

OTHER FEATURES OF THE WEIMAR CONSTITUTION:

1. THE BILL OF RIGHTS.

Freedom of spirit, freedom of the press, freedom of emigration, the equality of all Germans before the law,—these and many other fundamental civil liberties were enumerated. But in many instances the heart was taken out of these constitutional guarantees by inserting the provision that "exceptions may be made by law." It is not to be assumed, however, that the framers of the German constitution failed to appreciate the true significance of their action in this regard. They probably realized full well what they were doing when they provided that various constitutional rights might be infringed by authority of law if necessity should arise. Their idea was to enunciate certain principles which seemed to them to be worthy of observance under ordinary conditions, but it was not their intention that these principles should be absolutely binding upon the national parliament in all cases whatsoever.

A second feature of the Weimar constitution was its provision for a series of workers', employers', and economic councils. Wage-earners and salaried employees were to be organized locally into workers' councils; these were to choose delegates to district councils, and the latter, in turn, were to select representatives in a national workers' council. The employers were similarly to be organized into district and national associations. Then the two were to be brought into contact through joint district councils and a national economic council. Provision was made in the constitution that when the national ministry prepared any measure of fundamental importance relating to social or economic policy it should submit the measure to the national economic council before

2. ECONOMIC COUNCILS.

introducing it in the Reichstag. If the bill met with disapproval in the national economic council it might nevertheless be presented to the Reichstag and passed by that body. On the other hand the national economic council could, on its own initiative, prepare the draft of any such measure and submit it to the Reichstag either directly or through the ministry.

HOW THE COUNCIL PLAN FUNCTIONED.

In 1920 the national economic council was organized on a provisional basis with over 300 members representing all branches of German economic activity. Great hopes were reposed in it by economic reformers but they were not fulfilled. During the first few years of its existence many important projects were submitted to the council by the ministry and these, in turn, were referred to committees for consideration. Then they were debated by the council as a whole. But after 1923 the council ceased to hold plenary sessions and the committees sent their reports to the ministry direct. Likewise fewer projects of legislation were submitted to the council and in the end its committees virtually ceased to function. With the advent of the Hitler government it became lost in the general economic reorganization.[1]

REASONS FOR ITS FAILURE.

The failure of this experiment with a national economic council was due to several causes. One was the fact that many members of the Reichstag obtained seats in the council, thus giving it a political tinge. The council, in fact, soon showed itself divided into party groups and became a sort of auxiliary Reichstag with the same factional divisions. It would seem that this must inevitably be the case, for you cannot eliminate politics from any policy-determining body by merely calling it "economic" and providing that its members shall be chosen by industries rather than by districts. The determination of public policy inevitably becomes a matter of politics. Another reason may be found in the extremely difficult problems which were referred to the council by the ministers. And, finally, the national economic council failed to gain public confidence because it had no definite economic philosophy. On such questions as government ownership and government regulation of business it was badly divided within itself. Something may also be attributed to the fact that German public opinion, during the later years of the council's existence, was rapidly losing

[1] There is a discussion of the general subject in L. L. Lorwin, *Advisory Economic Councils* (Washington, 1931), and E. Linder, *Review of the Economic Councils in the Different Countries of the World* (Geneva, 1932).

confidence in deliberative bodies of any sort and was turning its favor to the principle of leadership.

A third conspicuous feature of the Weimar constitution was the security which it endeavored to give to the members of the German civil service. All parties were agreed that this corps of public employees should have its continuance and its integrity safeguarded. Accordingly the constitution provided that the vested rights of public employees should be inviolable, that they were not to be removed, suspended, or transferred except in accordance with conditions determined by law, and that they were to have full liberty to organize like private employees. As it turned out, this last provision was not altogether a wise one. Large and influential organizations of German public employees quickly came into existence and began to make demands on the government for higher pay and more privileges. They claimed, and sometimes exercised, the right to strike. When economic conditions in Germany became bad, and government expenditures had to be reduced, the salaries of public employees were cut and many of them were discharged. This led to widespread grumbling and much bitter criticism of the government by its own employees, thus lending support to a common impression that members of the German civil service were not standing loyally by the republic. Step by step the service was drawn into politics and when the National Socialist party came into power under Hitler's leadership (1933) it was given a drastic reorganization as will later be explained.

3. THE CIVIL SERVICE.

Surveying the provisions of the Weimar constitution as a whole one may venture the suggestion that they were out of joint with the times. Germany was not quite ready for the thoroughgoing parliamentary system which the constitution sought to establish. Some features of it, moreover, were ill-advised. The requirement of proportional representation, in a country where there were already too many political parties, rendered the smooth working of ministerial responsibility impossible. Article 48, the emergency provision, embodied what proved to be a dangerous delegation of authority to the executive. When that provision was under discussion at the Weimar convention only one delegate argued strongly against it,—Dr. Cohn of the Independent Socialist party. His predictions as to the probable misuse of the emergency power were fulfilled to the letter. But, most of all, the constitution failed because it did not provide Germany with the strong government which she

SUMMARY.

needed in order to cope with the difficult problems of the post-war years. These problems, one after another, were of such magnitude that even the most unified government would have found great difficulty in coping with them.

POLITICS DURING THE REPUBLICAN ERA[1]

The first Reichstag election was held in 1920. At this election the Social Democrats, who had been the chief party of opposition during the imperial era, gained the largest number of seats, about one third of the whole. But the Centrum, or Catholic party, also secured a sizable representation, and so did the People's party which gained large support from the industrialists and business interests. Several other parties, ranging from the Nationalists (or extreme conservatives) on the Right, to the Independent Socialists and Communists on the Left, had varying degrees of strength in the new legislative body. The middle groups were in control and by a combination among themselves they undertook to conduct the government. But no ministry proved itself able to keep the combination intact very long. The various difficulties connected with reparations, taxation, the inflation of the currency, and the French occupation of German territory proved beyond their power to overcome. The difficulty of keeping jealous party groups combined into a bloc encouraged compromise and drifting. Several ministries went into office and out again during the first few years of the new parliamentary government.

THE FIRST ELECTION UNDER THE NEW CONSTITUTION.

In May, 1924, a new Reichstag election took place. It had become apparent, during the campaign, that the middle parties, especially the Social Democrats, were losing their hold on the country. The Nationalists, with some success, were endeavoring to rouse popular resentment against the foreign policy of the government, a policy which involved compliance with various demands of the Allied powers. The Communists, at the other extreme, sought to capitalize the disappointment of the wage-earning classes who had confidently hoped to get more out of the revolution than they were obtaining. The general expectation was that both of these

THE TWO ELECTIONS OF 1924:

1. THE MAY ELECTION.

[1] For a more detailed survey the reader may be referred to F. Lee Benns, *Europe Since 1914* (2nd revised edition, New York, 1936), pp. 426–463, or to S. Neumann, *Die deutsche Parteien, Wesen und Wandel nach dem Kriege* (Berlin, 1932).

extreme wings would gain heavily at the first election of 1924, and they did gain, but not so heavily as was anticipated. The middle parties retained control of a majority in the Reichstag but could no longer muster the two thirds vote of that body which the constitution required in certain contingencies. It therefore became necessary to dicker with the Nationalists for their support, and this was done. The various measures which became essential under the so-termed Dawes plan of financial rehabilitation were put through the Reichstag by means of Nationalist votes

2. THE DECEMBER ELECTION.

The May election of 1924 left the German political situation in a state of unstable equilibrium. The extremists were too strong to let the middle groups control. On the other hand they were not willing to help maintain a coalition except at a price which the Social Democrats were unwilling to pay. It soon became apparent, therefore, that another appeal to the country must take place, and in December, 1924, a new election was held. The result of this election did not help matters much, for although the extreme Right and the extreme Left both lost somewhat, it was not possible to form a middle coalition which could be certain of a majority in the Reichstag. Ostensibly the Center, Social Democrats, and Democrats included more than half the House, but some members of the first-named group were too conservative to be relied upon in any liberal bloc. For a time the country was left without a ministry altogether, and finally the Right was given a chance to show what it could do. Early in 1925 a ministry containing four Nationalists was installed after giving assurance that they would stand by the republic.

THE ELECTION OF 1928.

This ministry managed to accomplish a good deal as respects the solution of foreign problems. It conducted the negotiations which led to the Locarno Pact and secured Germany's admission to the League of Nations. But these steps were resented by the Nationalists, who withdrew from the ministry and ultimately forced the rest of it to resign. Then a new ministry was constituted, once again from the middle parties, with both Nationalists and Social Democrats left out, but it lasted no longer than the others had done and in 1927 the Nationalists were once more taken into the cabinet. In the following year the time for a general election arrived and at this election the Social Democrats made considerable gains. It therefore became necessary to take a chancellor from the ranks of this party and he formed a ministry

with the aid of the middle groups, thus creating what came to be known as the Grand Coalition because five parties were represented in the ministry according to their strength in the Reichstag. High hopes were entertained for the permanence of this coalition but they were not fulfilled. The cement was too weak and failed to hold.

THE MARCH OF EVENTS, 1930–1933.

In 1930 the Reichstag refused to pass a measure which the chancellor regarded as essential to the financing of the government, whereupon President Hindenburg dissolved the chamber and ordered a new election. This election once more proved indecisive but it demonstrated that the National Socialists (Nazis), with Adolf Hitler as their leader, were gaining strength in the country. This stormy petrel of German politics had developed such a large following that he became the logical candidate to oppose Hindenburg when the latter stood for reëlection to the presidency in 1932. The old field marshal was reëlected by a safe margin but his advanced age made it improbable that he would serve out his second term. Meanwhile successive chancellors (Bruening, von Papen, and Schleicher) tried to keep the wheels of government moving, but without much success. Of these three, Franz von Papen was President von Hindenburg's personal choice, and having full presidential backing he proceeded to take strong-arm measures. By emergency decree he ousted Prussia's state government, barred its members from their office rooms, and made himself national commissioner for Prussia, thus setting an example of rule by force which his National Socialist successors were not slow to follow. But the stroke did not avail. Viewed in retrospect it marked the real beginning of the revolution.

THE WEIMAR REPUBLIC COLLAPSES.

Two general elections within a year failed to break the deadlock; meanwhile the country was growing tired of the perpetual uncertainties. As a last resort President Hindenburg opened negotiations with Hitler. An offer of the chancellorship, with various conditions attached to it, was rejected. Then, in January, 1933, it was tendered again and accepted. This step proved to be one of far-reaching consequence. It quickly led to the collapse of parliamentary government and ushered in the Third Reich.

TEXTS OF THE WEIMAR CONSTITUTION. An English translation of the Weimar constitution, by William B. Munro and Arthur N. Holcombe, is published by the World Peace Foundation (Boston, 1920). This translation

is also printed as an appendix in Brunet's book (see *below*) and in Bouton's book on the imperial abdication (see *above*, p. 608). Somewhat different renditions may be found in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 167–212, George Young, *The New Germany* (New York, 1920), A. Headlam-Morley, *The New Democratic Constitutions of Europe* (London, 1926), as well as in the volumes by A. J. Zurcher and by Blachly and Oatman (see *below*).

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Mention should also be made of René Brunet's *La constitution allemande du 11 août, 1919* (Paris, 1921) of which there is an English translation by Joseph Gollomb (New York, 1922). This book may profitably be studied, side by side, with Otto Meissner's *Das neue Staatsrecht des Reichs und seiner Lander* (Berlin, 1923). Johannes Mattern, *Principles of the Constitutional Jurisprudence of the German National Republic* (Baltimore, 1928) is a useful book, with a good bibliography, and so is H. Quigley and R. T. Clark, *Republican Germany* (London, 1928). Julius Hatschek, *Das Reichstaatsrecht* (Berlin, 1924) is a standard treatise on German constitutional law during the Weimar era, and Robert Hue de Grais, *Handbuch der Verfassung und Verwaltung in Preussen und dem deutschen Reiche* (24th edition, Berlin, 1929) is also authoritative.

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CHAPTER XXXV

THE THIRD REICH

We must get rid of the last vestiges of democracy, especially of the methods of voting and making decisions by majority.—*Adolf Hitler.*

Within two years after Adolf Hitler became chancellor the entire political organization of Germany was changed. The republic was transformed, by a series of executive decrees, into a dictatorship. On the death of President Hindenburg in 1934 no successor was chosen. As Reichsfuehrer and head of the state, Hitler merely absorbed this office. The Weimar constitution was never definitely abrogated as a whole with another constitution put in its place. It was simply emasculated, step by step, as the occasion required. The Third Reich does not rest upon a constitution, for it recognizes no real distinction in effectiveness between constitutions and laws, or laws and decrees. Meanwhile the Germans have taken to using a new political chronology. The mediaeval empire is now designated as the First Reich, the period from 1871 to 1918 as the Second Reich, the years from 1918 to 1933 as the Weimar Republic or Interregnum, and the Hitler régime, since the last-named date, as the Third Reich.

A RAPID TRANSFORMATION.

What form of government has Germany today? Even Germans find that question a difficult one to answer. The present German government does not fit into any of the usual classifications. It is not monarchical, although the head of the state is in office for life, with the power to name his own successor. It is not republican, for it is the essence of a republic that the chief executive shall hold office for a fixed term of years and that his successor shall be chosen by the people, either directly or through their representatives. The Third Reich is designated by Germans as a *Führerstaat* (leader state), a state based upon the principle of unquestioned leadership, just as an army is. In this form of government all authority comes from above. The Fuehrer may seek and take advice if he desires, but it is by his own inherent authority that he promulgates orders with the force of

INTO WHAT?

law, levies taxes, makes war or peace, and determines the manner of the common life with even greater freedom from restraint than any mediaeval despot did.

"AN ENNOBLED DEMOCRACY."

Yet the Third Reich cannot be called a despotism, as the term has commonly been understood, because the authority of the leader is ostensibly derived from the people. There was a time, not so long ago, when the world held the belief that where the masses of the people were given the right to choose their form of government there could be no danger of autocracy or dictatorship. They would always vote in favor of democracy and liberalism. But the developments of the past dozen years in several European countries have thrown doubt on this proposition. Millions of voters have gone to the polls in Germany and have there given a "manufactured" consent to the extinction of their own personal liberties.

The German government of today claims to have the most truly popular basis of any government in the world, because it was endorsed at the last election by almost ninety-nine-and-nine-tenths of the voters. But a government which absolutely controls all the agencies of propaganda and tolerates no organized opposition is bound to win endorsement at the polls. It merely goes to prove, what the world had not hitherto suspected, that universal suffrage and the secret ballot can readily be used to enthrone autocracy and destroy all freedom of political opinion. When Hitler designates his Third Reich as "the most ennobled form of a modern European democracy," he surely is giving this term a new definition.

THE RISE OF HITLER

ORIGIN OF THE NATIONAL SOCIALIST MOVEMENT.

Inasmuch as the establishment of the Third Reich in 1933 was the culmination of a National Socialist movement it is necessary to know something about the development and activities of this political organization. It began in Bavaria, shortly after the close of the World War. Starting with a small group, chiefly of war veterans, the National Socialist movement was mainly one of protest—against the humiliations of the Versailles Treaty, the growing menace of communism, the power of the Jews in Germany, and the extortions of money-lenders in general.

Among the original members of this group was a young Austrian, Adolf Hitler, who had served with conspicuous gallantry in the Ger-

man army during the war.[1] By the force of his personality he became the leader of the movement although he was not at that time a German citizen. Like most movements of plural protest, this one began to gain adherents, especially by reason of Hitler's tireless and effective speechmaking. Moreover, these were days when conditions in Germany provided plenty of ammunition for incendiary orators. The humiliations of the peace treaty with its admission of war guilt, the burden of reparations, the miseries which accompanied inflation, and the heavy hand of the Allied troops in occupation of German territory combined to furnish fuel for the flames of discontent. People listened readily to anyone who could suggest a way out of their troubles,—the restoration of Germany's prestige as a nation, the repudiation of war guilt, the end of reparations and sanctions, the elimination of unemployment, and the substitution of a firm, unified government for the squabbles and bickerings of Weimar republicanism.

HITLER'S EARLY LEADERSHIP.

So Hitler gathered followers and in 1923 attracted the attention of General Ludendorff who had himself become the leader of a group calling themselves Nationalists. The two joined forces and presently attempted a *coup d'état* which was designed to stampede the country and overthrow the government. But it proved to be a sorry fiasco; Hitler and various others were sent to jail, while the episode became scornfully known as "the beer-hall Putsch,"—from the fact that the conspirators had held their meetings in a Munich restaurant. Hitler did not stay in custody very long, however, for within a year he was released and although he was admonished to do no more speechmaking he soon resumed his political campaigning. With some results, moreover, for at the election of 1924 his National Socialists captured thirty-two seats in the Reichstag. From this modest beginning the strength of the National Socialists (Nazis) grew at the successive elections (but with occasional setbacks) until the party became the largest single group in the Reichstag.[2]

ITS GROWTH.

Meanwhile the National Socialists had provided themselves with a political platform known as *The Twenty-five Points.* This program, which was originally written by one of the group as early as 1920,

[1] For a full account of his activities during and since the war see Konrad Heiden, *Hitler· A Biography* (New York, 1936).

[2] Although "Nazi" is a polemical slang term in Germany, it has passed into general use among Americans as the accepted abbreviation for National Socialist.

consisted about equally of denunciations and demands. It denounced the peace treaty, the Communists, the Social Democrats, the Weimar Republic, and all its works. It demanded the "union of all Germans in one great Germany" (in other words the absorption of Austria), the abrogation of the Versailles treaty, the return of the German colonies, the exclusion of Jews from citizenship, the abolition of all income acquired without work, the relief of debtors, the abolition of "slavery to interest," the confiscation of war profits, the nationalization of all trusts and business combinations, the distribution of the profits of large industries, the public ownership of large department stores (which, by the way, were largely owned by Jews), the prohibition of child labor, the free education of gifted children, the curbing of newspapers "which work against the common good," the elimination of profiteers, the remilitarization of the country, and the creation of a strong central government with unqualified authority over every portion of the Reich.[1]

THE PARTY'S ORIGINAL PROGRAM.

Some of these twenty-five points were so vague that an official commentary was issued to elucidate them, and in 1924 a book by Hitler entitled *Mein Kampf* (My Battle) threw additional light on various phases of the program.[2] These interpretations made it clear that the Nazi philosophy regarded the Jewish "materialistic spirit" as Germany's chief bugbear. Through the diffusion of this spirit, it was said, the country had placed individual aggrandizement ahead of the public welfare, thus preventing the development of a national solidarity. On the other hand neither the twenty-five points nor Hitler's interpretation of them envisaged the abolition of private property or the overthrow of the capitalistic system. "Within the limits of the general duty to work incumbent on every German, and subject to the recognition of the principle of private ownership, every German shall be free to earn his living in whatever manner he chooses, and free to dispose of the results of his labor." Private initiative would therefore be fos-

THE NAZI SLOGANS.

[1] This is still the official Nazi program. It may be found in Gottfried Feder, *Hitler's Official Program and Its Fundamental Ideas* (London, 1934). This booklet also explains the various "points" in detail. An English translation likewise is given in J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (Ann Arbor, Mich., 1934), also in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part IV, pp. 9–13, and in R. L. Buell, editor, *New Governments in Europe* (New York, 1934), pp. 140–144.

[2] An abridged English translation by E T. S. Dugdale has been published in America (Boston, 1933).

tered in economic life, although "slavery to interest" must be ended and the productive power of the nation relieved from the burden of excessive debt charges. Germany, it was argued, must become a home for "creative, productive Germans, and not the abiding place of Jews, Communists, aliens, profiteers, and Social Democrats who recognize no fatherland."

FOREIGN POLICY IN THE HITLER PROGRAM.

In the domain of foreign policy the Nazi program had as its primary objective the liberation of Germany from the political and economic shackles imposed upon it by burdensome international commitments. Hitler and his associates made forthright demand for a "self-sufficient nation including all Germans" whether living in Austria, Poland, Czechoslovakia, or elsewhere. The restoration of the German colonies, the abolition of the Polish corridor, the expansion of German territory to the east (at the expense of Russia), and the elevation of Germany to a dominating position in Middle Europe,—these were other goals which the Nazis set before the eyes of the people.

THE PARTY ORGANIZATION:

These various objectives, which had become definitely formulated and interpreted by 1924, served as a rallying point for an increasing number of discouraged and disillusioned elements among the people. Revolution thrives on discontent and can grow in no other soil. Hitler and his fellow orators adapted the various points of the program to their audiences, promising all things to all men with a sublime indifference to consistency. Yet the Nazis did not become a dangerous factor in the German political situation until after 1928, because Germany was enjoying in the middle twenties an interlude of business revival due to the influx of foreign capital. Meanwhile, however, the party was perfecting for itself a semi-military organization.

1. MILITARY.

Members were enrolled in divisions, regiments, and battalions of Storm Troops, the ostensible purpose of which was to combat the menace of communism. There was also organized a large group of *Schutzstaffeln* or bodyguards who accompanied and protected the Nazi leaders when they went around the country with their propaganda. Hitler became recognized not only as the supreme leader of the Nazi party but as leader of the Storm Troops and other semi-military organizations which gave him what was in effect a private army.

Paralleling this military organization there was developed an

elaborate civilian set-up for the party. At the head of it was the leader (*Der Führer*) with a cabinet of nineteen members, each of whom assumed responsibility for some phase of Nazi activity. For example, the party cabinet included a chief of staff of the Storm Troops, a director of the press bureau, a youth leader, a propaganda director, a business manager, and so on. Then the country was divided into districts (*Gaue*), each under the management of a district leader. Within every district the party organization was divided and subdivided under local leaders right down to the the Nazi *Blockwart*, a party official in charge of a single city block. Finally, there were innumerable "cell organizations," operating in factories, stores, schools, and among agricultural workers. Ancillary to this regular party organization were such associations as the league of Hitler Youth which kept the party ranks recruited from below.

2. CIVILIAN.

Gradually, in this way, the Nazi network was extended into every nook and corner of German life. Brown shirts, emblazoned with the party emblem (the swastika), were in evidence everywhere. Speakers by the thousand were sent to all parts of the Reich, protected by squads of Storm Troops, to spread their gospel. This cost a great deal of money, but every member of the party paid dues. The campaign funds were also augmented by contributions from many non-Nazis, including large industrialists, who looked upon the movement as their chief reliance against the spread of communism. Hitler, moreover, showed himself a master of crowd psychology. His organization adopted a symbolic ritual and developed an elaborate military ceremonial (including a new salute) which encouraged every Nazi to look upon himself as a knight in the new crusade.[1] All in all the National Socialists, using the two simple principles of leadership and discipline, brought their party organization to a very high degree of efficiency and developed an aggressiveness which no other German political party approached.

ITS METHODS.

But neither the compendious generalities of the National Socialist

[1] The Nazis also adopted a militant song, the Horst Wessel Song, which has now become a sort of national anthem for the Third Reich. Its composer, Horst Wessel, was a University of Berlin student and Storm Troop leader who was shot by a group of alleged Communists in 1930. One verse of this battle hymn (in English translation) runs as follows:

> Clear the streets for the brown battalions!
> Out of the way for the Storm Troop men!
> Millions with hope see the swastika emblem,
> Bread and Freedom are here again.

program nor the excellences of the party organization would have availed to place Hitler in power had it not been for various other forces which played into his hands. First among these was the severity of the economic depression which began in Germany, as in the rest of the world, during the years 1929–1930. The years immediately following the close of the war had been bad enough for the German people, with the lurid experience of uncontrolled inflation which swept away the property of the middle classes and disorganized the whole economic life of the country. But the Weimar Republic weathered the storm and during the middle twenties seemed to be getting more solidly on its feet.

REASONS FOR THE NAZI SUCCESS:

1. THE ECONOMIC SITUATION

With the onset of the world-wide depression in 1930, however, the government could no longer stem the tide of increasing unemployment or assure to the masses of the people a reasonable standard of living. Banks began to totter and industries shut down. The country defaulted its reparation payments. International trade fell off and the inflow of foreign capital ceased. Although the economic crisis in itself was hardly worse than it became in the United States during the early months of 1933, the immediate effects upon the people were much more severe because Germany had no reserves to go on. The monetary inflation which followed the war had wiped out the savings of the middle classes and the brief prosperity of the later twenties, itself largely induced by foreign capital, had not been adequate to replace them. So the country went rapidly and deep into economic disorganization. "Work and bread," the Nazi slogan, carried a strong appeal to the millions who were without jobs.

The existing government seemed utterly unable to deal with this crisis. It could not, or would not, stem the tide of economic deflation. In Germany, as in America, the people demanded a new deal, but no ministry could keep itself in power long enough to give it to them. The democratic forces which were behind the Weimar Republic had no leader who could hold them together and capture the imagination of the people by proclaiming a forthright policy. It is rather significant that the only figure of national stature connected with the republic was President von Hindenburg, himself a monarchist at heart, and a "Wooden Titan" besides.[1]

2. IMPOTENCE OF THE EXISTING GOVERNMENT.

[1] See J. W. Wheeler-Bennett's biography of Hindenburg (the best yet published) entitled *The Wooden Titan* (New York, 1936).

Hitler was fond of saying during these years that party was merely fighting party; the Reichstag was fighting the government, and the government was fighting the people. Spasmodic attempts to alleviate the situation by the issue of emergency decrees seemed only to make matters worse. People will not starve in the name of democracy. The masses would rather be secure in their daily bread than in their right to freedom of speech, if they have to make a choice. As between steady jobs and freedom of the press, they will take the former if there is no third alternative. Democracy, after all, is a fair-weather craft. People believe in it when things are going well. But when a typhoon comes they clamor for strong hands at the helm, and to secure this they seem ready to make almost any sacrifice of political principles. The history of economic depressions in all countries gives proof of this.

Another factor which expedited the growth of Hitlerism was the unsatisfactory character of Germany's foreign relations. Not only had the Germans been needlessly humiliated by the Treaty of Versailles, being forced to acknowledge the entire guilt for the outbreak of the war, but many provisions of the treaty were harshly interpreted by the victors. One ultimatum from the Allies followed another, each backed up by threats of penalties. No self-respecting German could be proud of his country during these years. For the nation which had once been looked upon as the foremost power in Europe now saw her colonies taken away, her navy obliged to surrender and be destroyed, her army reduced to a Reichswehr of 100,000 men, military air forces prohibited, reparations exacted, her territory cut asunder by the Polish corridor, a union with Austria outlawed, and some of her most valuable sources of raw materials (such as the Saar) kept from her.

3. THE APPEAL TO PATRIOTISM.

Moreover the unwillingness of the Allies to modify the harsh provisions of the Versailles Treaty disillusioned the German people about the processes of peaceful diplomacy. The League of Nations seemed to be providing Germany with no means of relief from her international humiliations. Although President Wilson and his fellow liberals at the peace conference had aroused in the German people a spark of confidence in peaceful methods of adjusting international disputes, this was extinguished by the rigidity with which the terms of the treaty were enforced. Consequently they listened more readily to Hitler's declara-

TO THE MARTIAL SPIRIT.

tion that the only way to get relief from the humiliations and burdens of the "dictated peace" was to rearm the nation and rely once more on force as the only dependable instrument of international diplomacy. Then Germany, the Hitler orators declared, would take whatever she needed or desired, irrespective of treaties.

Nor did they omit to impress upon their hearers that although Germany had won most of the battles she had lost the World War through "a stab in the back," in other words that the army had been betrayed by a government which, at the time of the armistice, was dominated by Social Democrats, Catholic Centrists, and parliamentary liberals of other varieties. It was by the representatives of these political groups that the bitter terms of the armistice had been accepted and the subsequent peace treaty signed. The Weimar Republic, they screamed, was "a republic of traitors." It had been established, they said, at the behest of the Allies who wanted Germany to have a weak government. For had not President Wilson insisted upon the demolition of the Second Reich before even an armistice could be granted? By way of contrast with all this the Nazi leaders pledged themselves to rebuild the army, thus facing the outer world with a "phalanx of steel," to make Germany once more a great naval power, to create an air force second to none, to repudiate all the limitations placed upon the Reich by other countries, to sweep the foreign office "with an iron broom," and to regain for Germany her "rightful place as an equal in the family of nations." The impact of these appeals upon the national spirit was overpowering.

AND TO THE NATIONAL RESENTMENT.

THE NAZIS AND THE JEWS

Then there was the capitalizing of anti-Semitic prejudice. Prior to the World War there had been a certain amount of official discrimination against the Jews in Germany although it never extended to persons of partial Jewish ancestry. Jews and part-Jews, as a matter of fact, have never formed a large element in the population of modern Germany. The estimates vary, and must necessarily be guesswork because there is no accurate way of determining how many Germans have a slight Jewish dilution of their professed Aryan purity. A liberal estimate, however, would be less than three million "non-Aryans" in a total population of over sixty-five millions. During the imperial régime all German Jews had been permitted to exercise all

4 CAPITALIZING THE ANTI-JEWISH FEELING AMONG THE PEOPLE.

the ordinary civil privileges although they were seldom found in the higher ranks of the military and naval service. They were fairly well represented in the legal profession, the civil service, the judiciary, and the universities. It was in the realm of business, however, that they made the greatest headway. Members of the Jewish race accumulated a good deal of economic power in pre-war Germany through their control of banking and credit as well as through the ownership of large industries, department stores, and newspapers. They figured prominently among the captains of industry, the barons of finance, and the owners of the great journals of information as well as in the fields of literature, art, music, and public recreation.

WHY THIS FEELING HAD INCREASED.

The Revolution of 1918, the Weimar constitution, and the new liberalism gave them still greater scope. This constitution declared all Germans to be "equal before the law," and abolished "all privileges and discriminations due to birth." Its principal author was a Jew.[1] And immediately after the new organic law went into effect the Jews began to play an enlarged part in German public life. It was quite natural that this should happen with the incoming of the new régime, for in a democratic republic it is the lawyers, bankers, merchants, and newspaper men rather than members of the nobility or large landowners who generally take the reins into their hands. Jewish lawyers became especially prominent in the Progressive party and in the Social Democratic party during the republican interlude.

JEWS IN THE PUBLIC SERVICE.

It has often been alleged by their Nazi persecutors that German Jews swarmed into the government service during the era of the Weimar Republic and were responsible for many of the nation's vicissitudes during these years. And it is probably true that there were more Jews on the public pay roll in 1933 than there had been at the close of the war. But even so, they formed a very small element in the whole service,—less than one per cent. Nor do the figures indicate that members of the Jewish race were numerous in the policy-forming branch of the government under the Weimar Republic. More than 250 ministers served in the various German cabinets between 1918 and 1933, but of these not more than a dozen were of Jewish or part-Jewish ancestry.

In the course of the great inflation, moreover, when fortunes van-

[1] Dr. Hugo Preuss. See his volume entitled *Um die Reichsverfassung von Weimar* (Berlin, 1924).

ished everywhere, the bankers, industrialists, and merchants naturally fared better than persons with fixed incomes who had their savings wiped out. That is what usually occurs during an uncontrolled inflation. And it happened that many of these bankers, industrialists, and merchants were Jews. Leading Jewish bankers and traders had foreign affiliations, as all bankers and large traders have. For this reason they were alleged to be in a conspiracy with Germany's neighbors to enforce the payment of reparations and keep the nation poor. Hitler's oratorical barrage also directed itself against what he termed the Jewish alliance with communism, as illustrated by Russia where Jews figured prominently among the Soviet leaders.

THE JEWS DURING THE INFLATION.

Now it is a rather significant fact that of all races in history the Jewish race is the one that has been most frequently persecuted. And there would seem to be more than one reason for this. Something may be attributed to the inherent capacity of the Jewish race, especially in the fields of trade and finance. The Jew, as a rule, is hard-working, shrewd, thrifty, saves his money, invests it profitably, and makes two or three shekels grow where one grew before. In competition with races which do not possess these qualities the Jews are bound to win, but on their way to the top they often leave a trail of envy and resentment behind. Much of the animosity towards the Jews, at all times in modern history, has not been because of their Judaism but because of their economic competence. "And Israel shall be a proverb," wrote one of her prophets, "and a by-word among all the peoples."

WHY THE JEW IS PERSECUTED:

(a) THE ENVY OF OTHERS

Envy and resentment, however, have not been the only mainsprings of anti-Semitic hostility. The Jews, in the main, do not spread themselves uniformly into all the vocations and professions but tend to concentrate into a few of them. They do not intermarry freely with other races but keep their racial integrity well guarded. Scattered over the face of the earth for more than a thousand years, without a homeland, it is amazing that this race should have so well preserved its solidarity. By so doing, however, it has rendered its members easy to distinguish from the mass of the people when any movement for discrimination arises. The Jew, moreover, tends to be an individualist and an internationalist. As a rule he is not intellectually docile, as the rank and file of most other races are; he inclines to think for himself rather than

(b) OTHER REASONS.

to let somebody else do it for him. While he performs his civic duties with reasonable fidelity, the Jew's patriotism is not of the aggressive type. And quite naturally he has never reconciled himself to the idea that Germans, Russians, Spaniards, or any of the other people among whom he has lived are the salt of the earth. This, of course, renders him guilty of what the French Jacobins called *incivisme*, the offense of not being sufficiently effusive in his enthusiasm for the government under which he happens to live.

Mention may also be made of the fact that when economic disasters overtake any country, with widespread and tragic losses of fortune, the Jews seem to fare better than most other people. This is partly because of their shrewdness and caution, but it may also be due in part to the long schooling which the race has had in the art of finding a safe haven when trouble impends. Harsh discrimination in all ages, and in nearly all countries, has naturally developed in the Jew a certain measure of skill in looking out for himself. The German Jews were charged with having profiteered during the war, but if they did they certainly had no dearth of Aryan company in doing this. It was said that most of the Jews who were called into service during the war either found ways of escaping this service or managed to get safe posts, away from the battle-fronts,—an allegation which the figures prove to have been without any foundation. They were assailed for having managed to keep some of their wealth when others lost it. In fact it was frequently charged by the Hitler propagandists that they had scuttled the ship by withdrawing capital from industry and sending it to safety abroad, thus accentuating the depression at home.

THE ACCUSATION OF "SCUTTLING THE SHIP."

Some of these charges were without foundation, but they were widely believed and gained adherents to the Nazi cause. And immediately following Hitler's seizure of power the persecution began in earnest. First it took the form of a boycott, with the picketing of Jewish stores and offices by Nazi Storm Troopers. Then followed a decree for the purging of the civil service. This decree, besides barring all Jews and other "enemies of the state" from public employment, contained what has become known as "the grandmother clause," a provision which extended the disbarment to anyone who could be shown to have had Jewish grandparents. The civil service decree soon became the model for other regulations and orders which were intended to harry the Jews out of

THE BOYCOTT.

all other positions of responsibility, semi-public and private, throughout the Reich. Step by step they found themselves virtually excluded from employment by railroads and banks, from the legal and teaching professions, from journalism, and from an increasing number of activities—vocational, social, and cultural. Even the universities slammed their doors against Jewish students. Finally, by a decree based on the Reich citizenship law of 1935 it was provided that "a Jew cannot be a Reich citizen. He is not allowed to vote in political affairs; he cannot hold a public office." In the same year a law "for the protection of German blood and German honor" forbade the intermarriage of Jews with citizens of German or kindred stock. Thus deprived of their citizenship, and of the means whereby they were earning a livelihood, large numbers of Jews have had to leave Germany and flee as refugees to other countries. Among these are many of the foremost among the nation's scientists and men of letters.

5. OTHER FACTORS WHICH FAVORED HITLER.

But Hitler did not ride into power on the crest of an anti-Semitic crusade alone. There were numerous classes to whom his compendious program carried an appeal. Small shopkeepers who felt the keen competition of large department stores and chain stores lent a willing ear. Landowners and houseowners whose property was mortgaged to the banks saw in Hitlerism an avenue of escape from their interest burdens. This was particularly true of the small farmers, or peasants, who became the principal objective of Hitler's mass appeal. The promise to abolish interest on mortgages, loans, and all other forms of indebtedness (a promise which, by the way, the Hitler government has never carried out) drew a large fraction of the debtor class into the Nazi ranks.

There were several million German workers out of employment during the early thirties, moreover, and most of these people, including university graduates and other white-collar workers, took at face value the Nazi promise to give everyone a job. They did not realize then, as they do now, that many of the jobs would be as "farm helpers" or in labor camps, with scythe and spade, pick and shovel German youth, likewise, were captivated by the pledge of a new era in which their fatherland would have first place among the virile nations of the world. They were also intrigued by the Hitlerite declaration that "it is the duty of the national government to provide the necessaries of life" and that "a limit shall be set to the immoderate

amassing of wealth in the hands of individuals." Even the big industrialists turned in many cases to the ideology of national socialism as the most dependable bulwark against the menace of communism Among the twenty-five points there was something for nearly everyone. It is rather surprising, in fact, that the National Socialist program did not completely sweep the country.

THE FINAL SUCCESS OF THE NAZI MOVEMENT.

Yet when Hitler became chancellor in the early days of 1933 his party did not possess a majority in the Reichstag. It was therefore necessary for him to form a coalition ministry, which he did. But it soon became apparent that he did not intend to be the head of a coalition government very long. A dissolution of the Reichstag was promptly decreed by President Hindenburg (although he had just refused a dissolution to Hitler's predecessor) and a new election was ordered. At once the Nazi members of the ministry took full control of the preparations for this election, backed by their party organization which now ramified into every part of the country. In propaganda they excelled, and their giant propagandist machine was thrown bodily into the campaign. Hitler's Storm Troopers were inducted into the police as auxiliaries, so that they virtually controlled the enforcement of law and the maintenance of order during the campaign. A communist scare of large proportions was artificially created; all opposition speechmaking and electioneering were eliminated by Storm Troop pressure; and electoral intimidation became the order of the day. The outcome of the campaign was made more certain by the burning of the great Reichstag building in Berlin a short time before the date set for the balloting. The origin of this conflagration is still a mystery, but the National Socialist leaders lost no time in blaming it on their opponents, especially on the Communists.[1] It gave the government an opportunity to arrest the opposition leaders, to throttle the press, and to suspend until further notice all the personal liberty provisions of the Weimar constitution.

THE ELECTION OF MARCH, 1933, AND THE ENABLING ACT.

The German people went to the polls in March, 1933, with passions roused to an extreme. But despite their tactics of wholesale intimidation the National Socialists did not manage to secure a majority of the seats in the Reichstag. By joining with a closely allied group of Nationalists, however, they were able to control the

[1] For an impartial eye-witness account of the London *Times* correspondent see Douglas Reed, *The Burning of the Reichstag* (London, 1934).

Chamber by a narrow margin.[1] The victory was not clean-cut, but it sufficed. The newly elected Reichstag met for a single sitting (with the Communist members excluded) and obediently passed an Enabling Act which virtually concentrated all political power in Hitler's hands. In addition to the National Socialists the members of the Catholic Center and of several other groups voted for this act, being cajoled by assurances which were never fulfilled. They were also influenced, no doubt, by a speech made to them by Hitler in which he announced that "the government insists upon the passing of this law . . . but is equally resolved and ready to meet the announcement of refusal and thus of resistance."

The first two articles of the Enabling Act deserve to be quoted:

> *Article I* National laws can be enacted by the Reich ministry as well as in accordance with the procedure established in the constitution. This applies also to the laws referred to in Article 85, paragraph 2 [the power to enact a budget] and in Article 87 [the power to borrow] of the constitution.
> *Article II.* The laws enacted by the Reich ministry may depart from the constitution so far as they do not affect the position of the Upper House [Reichsrat] and the Reichstag. The powers of the President remain untouched.

These two provisions, it will be noted, conferred upon the ministry, all the members of which were named by Hitler, the power to enact laws both inside and outside the constitution. An additional article provided that the ministry might also make treaties without consulting the legislative chambers.[2] The Enabling Act was valid as an amendment to the Weimar constitution because it was passed by a two thirds majority in the Reichstag, but it was an amendment which emasculated the entire document. At a single stroke the newly elected Reichstag abdicated its own powers and left the nation with virtually no constitution at all. Having passed this amazing piece of legislation the Reichstag adjourned and did not meet again.

CHIEF PROVISIONS OF THE ACT.

ORGANIZATION OF THE THIRD REICH

Then things began to happen with drumfire rapidity. All political parties in the Reich, with the exception of the Nazis, were forthwith dissolved. The latter were duly declared to be the only recognized

[1] The total Reichstag membership was 647. The National Socialists obtained 288 seats and the Nationalists 52.

[2] The text of the Enabling Act is given in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part IV, pp. 14–15.

political party. Communists were harried out of the land. Persecution of the Jews was begun on a large scale, culminating in their complete loss of citizenship (September, 1935). Members of the ministry other than Nazis were eliminated. The Upper House (Reichsrat) was abolished in spite of the limitation which had been placed in Article II of the Enabling Act. In 1934, on the death of President Hindenburg, the powers of the presidency were merged with those of the chancellor. The office of Fuehrer, which now combines the presidency and chancellorship, was given life tenure. Its incumbent is entitled to name his own deputy. And the Enabling Act was widened to give the ministry the right of enacting new constitutional laws without restriction whatsoever.

THE RAPID SUCCESSION OF RADICAL CHANGES.

The political structure in the Third Reich has thus been simplified to a point where it requires no elaborate description. There is no constitution. The head of the government is *Der Führer*, president and chancellor combined, appointed for life. He chooses the ministers who hold office during his pleasure and are responsible to him alone. At present the ministry includes, besides the chancellor, fifteen members. Thirteen of them are heads of departments, namely, finance, foreign affairs, interior, defense, economic affairs, food and agriculture, labor, communications and posts, justice, aviation, education, church affairs, and propaganda. Two others are ministers without portfolio. In addition there are many boards and commissions appointed by and responsible to the ministry. The Reichsrat, or Upper House, no longer exists. But the Reichstag (elected in March, 1936) continues in being, although it now contains virtually none but National Socialists because the voters were given no alternative but to vote *Yes* or *No* on a single slate of candidates submitted to them by the government. As a body it retains no real function except to hear and acclaim an occasional address by Herr Hitler.

THE NEW NATIONAL GOVERNMENT.

Organization for the control of economic life in Germany is much more complicated. This consists of a vast network comprising all manner of bureaus, "estates," boards, commissions, directors, trustees, leaders, inspectors, coördinators, and what not. In general, all of these are linked up with one of the regular ministerial departments, such as economic affairs, food and agriculture, labor, or finance, but in some cases they have a very large measure of inde-

ITS VAST MECHANISM FOR ECONOMIC COÖRDINATION.

pendence. The elaborate regulations for stimulating production, fixing prices, distributing labor, and controlling foreign trade are framed and enforced by these boards and functionaries, as will be explained in the next chapter.

THE REFERENDUM PROCEDURE.

During the fourteen years preceding 1933 there was provision for the use of the initiative and referendum in Germany. The Nazi government has abolished the former and greatly limited the latter. A referendum or plebiscite may now be held only when the ministry orders it. This restriction has kept the weapon of a popular vote from becoming a danger, while on the other hand it has afforded Hitler an opportunity to use the political technique which was so popular with the two Napoleons, namely, that of doing something dramatic and then calling upon the people to ratify it.

PURGING THE CIVIL SERVICE.

Under both the imperial constitution and the Weimar constitution German administration was largely in the hands of a permanent civil service. This was a well-trained, efficient body the members of which were appointed without reference to party service and enjoyed security of tenure. When the republic was established, immediately after the close of the World War, its leaders did not turn out of office all those who had served in subordinate posts under the empire. Practically all were retained in their old positions; there was no general purging of the service by the new republican authorities. It is probably true that some members of the old bureaucracy did not do their best to popularize the new republic, although complaints on this score were exaggerated.

HOW IT WAS EFFECTED.

But the National Socialists, when they came into power, decided to do differently from their predecessors. One of their first steps was to promulgate a new civil service law (April, 1933), which ousted all officeholders of "non-Aryan" descent except those who had served in the war or whose fathers or sons had been killed in the war.[1] In addition this law provided for the dismissal or transfer of all officeholders whose political affiliations were open to criticism or who had at any time "come out in an offensive manner" against the Nazi movement. These provisions made it possible to dismiss or transfer to a lower post almost any officeholder, and most of those who could not qualify as bona fide sympathizers with the Hitler program were gradually eliminated.

[1] In 1935 these exempted Jewish officeholders were also eliminated but allowed to retain their pension rights.

The law of 1933 has now been superseded by a new civil service law, promulgated as a "cabinet act" in 1937, which completes the process of making the bureaucracy an integral part of the totalitarian state.[1]

To realize the vast extent of this administrative house-cleaning it needs to be borne in mind that the German civil service includes not only what the term implies in America but judges, school teachers, university professors, and all persons engaged in certain semi-public enterprises. Provisions similar to those of the civil service law have also been incorporated in regulations for admission to the legal profession, the medical profession, and even the universities. According to the official figures, however, there are still a good many "non-Aryans" in some of these professions, but they are gradually being weeded out.

ITS BROAD SCOPE.

The judicial system has also been considerably reorganized. Since April, 1935, there have been no state courts in Germany. All courts from highest to lowest are organs of the national government. Under the empire and the republic all the regular courts, except the *Reichsgericht* or supreme court, were state courts. In a general way the old hierarchy of courts has been continued, but it has been made uniform and nationalized. The change has rendered it possible for the government to "purify" the courts and make sure that all the judges are not lacking in sympathy with the political authorities. On the other hand the German judiciary has not had its spirit of independence completely crushed out, as is demonstrated by the way in which persons brought to trial by government prosecutors have frequently been acquitted by the judges.

JUDICIAL REORGANIZATION

The ordinary courts begin with the *Amtsgerichte* or local courts which exercise original jurisdiction, both civil and criminal, in the general run of cases. Ordinarily a single judge conducts the proceedings in this local court, but in the trial of serious crimes the judge is assisted by two laymen as assessors or jurymen. These two jurors are

1. LOCAL COURTS (AMTSGERICHTE).

[1] As this consolidated civil service law of 1937 contains no fewer than 184 sections a summary of its provisions is hardly practicable here. But in general the law excludes all non-Aryans from the service and virtually requires every new entrant to have the endorsement of the local Nazi party organization. Then it lays down various technical qualifications, provides for life tenure after five probationary years in certain cases, and devotes many pages to such matters as salaries, pensions, discipline, hours of work, and the maintenance of "strict secrecy" within the service. A good account may be found in James K. Pollock and Alfred V Boerner, Jr., *The German Civil Service Act*, published in 1938 by the Civil Service Assembly of the United States and Canada.

chosen by lot from the citizenship and are consulted by the judge in reaching his decision.

Next above these local courts are the district courts (*Landgerichte*), of which there are more than 150 throughout the Reich. Each of these courts has two sections, one civil and one criminal. Each section has a presiding judge and two or more associate judges. These courts hear appeals from the local courts and also have original jurisdiction in cases which are beyond the competence of the latter. For the trial of very serious crimes (those punishable by death or life imprisonment) there are special jury courts (*Schwurgerichte*), established in connection with the district courts. But these courts do not use juries in the American sense. Each German jury court has three judges, together with six jurymen or assessors chosen by lot. All sit together and determine the verdict by majority vote. In some instances the district court has additional sections, beyond those dealing with ordinary civil and criminal cases, for example, a commercial section to deal with business controversies.

2. DISTRICT COURTS (LANDGERICHTE).

Then there are the superior courts (*Oberlandesgerichte*), twenty-seven of them. They serve as courts of appeal, and are divided into sections, each section having from three to five judges. For the trial of persons accused of treason a special court known as the People's Court (*Volksgerichthof*) has been established. Other special courts, known as *Sondergerichte*, have been set up in each superior court district for the trial of certain specified offenses against the Reich, the people, or the National Socialist party. A law which was promulgated on July 5, 1935, embodies a novel principle of jurisprudence in that it empowers the courts to punish any offense, even though it is not punishable under the criminal code, if the court feels that the offense is one that deserves to be punished "in accordance with a healthy public sentiment." Thus far, however, this provision has been very little used, although it would seem to have large possibilities for oppression.

3. SUPERIOR COURTS (OBERLANDESGERICHTE).

Finally, there is the supreme court (*Reichsgericht*). It is an inheritance from the old régime. The German supreme court does not sit in Berlin but at Leipzig. It has about a hundred judges who sit in sections or "senates" of five or more judges each. The court exercises a final appellate jurisdiction over all the other courts. Under the Weimar constitution the supreme judicial court was given power to de-

4. THE SUPREME COURT (REICHSGERICHT).

clare state laws unconstitutional, but now that the state legislatures have been abolished such issues no longer arise.

ADMINISTRATIVE COURTS.

In Germany the distinction between ordinary and administrative law has long been recognized. Under the Hohenzollern empire and during the period of the Weimar Republic the distinction was fully recognized. Special administrative courts were maintained for the adjudication of suits brought by citizens against the government or its officials. The Weimar constitution provided for the creation of a supreme administrative court (*Reichsverwaltungsgericht*) corresponding to the council of state in France, but this has not yet been done. In a general and somewhat spasmodic way the Nazi government continues to recognize a distinction between ordinary and administrative law, and the civil service act of 1937 gives public employees certain rights of appeal to the administrative courts; but the idea that the citizen has legal rights against his government, with power to enforce these rights in any court,—that idea does not have any place in the political philosophy of national socialism.

SPECIAL COURTS.

The Third Reich is well provided with special courts, such as labor courts (*Arbeitsgerichte*) and courts of social honor (*Soziales Ehrengerichte*) which deal with controversies between employers and workers.[1] There are three gradations of these labor tribunals, topped by a supreme labor court. These courts handle a vast amount of business. Special courts of the Agricultural Estate and of the Estate of Industry and Trade settle controversies between members within these organizations.[2] Mention should likewise be made of the health courts (*Erbgesundheitsgerichte*), of which there are more than two hundred scattered throughout the Reich. Each health court is composed of a judge and two physicians; they administer the Nazi laws relating to eugenic sterilization.

THE UNIFICATION OF THE POLICE FORCES.

Not only the courts have been unified, but the police system as well. Prior to the advent of the Hitler régime each of the German states controlled its own police establishment and they usually delegated a portion of this control to the municipalities. Now there is a uniform system throughout the entire Reich, with centralized control and standardized police procedure. The nation-wide organiza-

[1] See *below*, p. 653.
[2] *Ibid.*, pp. 659, 650.

tion is divided into branches such as the *Ordnungspolizei* and the *Sicherheitspolizei*. In addition there is a special body of secret state police known as the "Gestapo" with the special function of ferreting out political offenders.

STATE AND LOCAL GOVERNMENT

THE "GLEICHSHALTUNG" PROCESS.

One of the much-used terms in the lexicon of National Socialism is *Gleichshaltung*. The word is not easily translated into English, but in general it signifies the ordering of all things into the same groove, the shunting of all cars onto the same track, the casting of all metals in the same mould. Our usual rendition into English is "coördination." Now it will be recalled that the fifteen German states, under the Weimar constitution, retained a considerable measure of local self-government. Each kept its own executive, legislature, and judiciary. But with the advent of the Nazi government in 1933 the process of coördinating these governments with the Reich was rapidly pushed forward. By a law which the complaisant Reichstag enacted (January 30, 1934) on the first anniversary of Hitler's accession to power, the state legislatures were abolished, the powers of the states were transferred to the Reich, the state ministries were made responsible to the national ministry, and the various states (with the exception of Prussia) were placed under the administration of national governors. Each state governor (*Staathalter*) is appointed by the national ministry on recommendation of the minister of the interior. Prussian affairs, however, are kept under the supervision of the supreme leader, but are directly in charge of a minister-president appointed by him.

STATES REPLACED BY DISTRICTS.

FEDERALISM ABOLISHED.

By these arrangements the German states have been "coördinated" with the Reich. Germany has ceased to be a federalism and has become a thoroughly centralized nation. The avowed purpose of the Nazi leaders has been to get rid of the state rights and eventually of state boundaries, replacing them by national supremacy exercised in artificial districts (*Reichsgaue*) similar to the French departments, but on a larger scale. A complete system of districting has not been put into effect, nor has much progress been made in that direction as yet, although the government has recently reiterated its purpose to carve the entire Reich into districts averaging between three and four million inhabitants each.

Municipal government in Germany has also been coördinated. Prior to the Nazi revolution each of the German states had its own municipal system, and they varied considerably among themselves.[1] The new German Municipal Code of 1935, however, provides a uniform framework for all of them and lays down certain principles which are intended to ensure the full coöperation of the cities in the policy of the Reich.[2] This code is a comprehensive one, embodying many details of local administration.[3] In general, it abolishes the elective city councils and replaces them by appointive councils having advisory powers only. The bürgermeisters, who were formerly chosen by the city council, are now appointed by the Reich's minister of the interior on the recommendation of the Nazi party's local representative.[4] The bürgermeister, in each city, is assisted by chief executive officers (*Beigeordnete*) whom he appoints, but only after receiving the recommendations of the party agent. Bürgermeisters and their chief assistants are chosen for twelve-year terms. Members of the advisory city council are selected by the local agent of the National Socialist party in agreement with the bürgermeister. While the powers of the council are of an advisory character only, the municipal code sets forth a list of matters on which the council must be consulted by the bürgermeister before a decision is reached by him, but "if the matter does not admit of delay the bürgermeister may proceed without consulting the council."

COÖRDINATING THE CITIES.

Other provisions of the municipal code deal in detail with such matters as local finance and taxation, budgets and budgeting procedure, municipal utilities and public works, the management of municipal property, and the status of city employees. But every branch of municipal administration must be conducted under the supervision of the national authorities. The minister of the interior is designated by the municipal code as the "highest supervising authority." He or his subordinates, the national governors, may require any order to be issued, any ex-

STRICT NATIONAL SUPERVISION.

[1] Roger H. Wells, *German Cities* (Princeton, 1932), and B. W. Maxwell, *Contemporary Municipal Government of Germany* (Baltimore, 1928).

[2] Known as the *Deutsche Gemeindeordnung*, or more briefly, as the D.G.O. The official text is published in the *Reichsgesetzblatt* (1935), I, pp. 49 *ff.*

[3] An English translation is published in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part IV, pp. 34–65.

[4] This party representative, after consulting with the advisory city council, recommends three candidates for the position of bürgermeister and the minister of the interior then makes the confirmation from among these three.

penditure to be made, or any action to be taken by the municipal authorities. Or they may revoke and annul any action taken by the local authorities on their own initiative. This complete subordination of the municipalities to the Reich is provided, the code rather naively declares, "in order to be sure that their affairs are managed according to the purposes of the Reich's leadership and in harmony with the policy of its government."

The provisions of the municipal code do not apply to Berlin. The capital city has a special régime. Instead of a bürgermeister it has a national commissioner as its chief executive. In accordance with the *Fuhrerprinzip*, or principle of centralized leadership, all municipal authority is concentrated in this commissioner, subject to supervision by the minister of the interior. There are executive officers to assist him, and a nominated council with advisory powers.

BERLIN.

On the changes made by the Third Reich and its present organization much interesting material will be found in Fritz Morstein Marx, *Government in the Third Reich* (2nd edition, New York, 1937), Henri Lichtenberger, *The Third Reich* (New York, 1937), R. L. Buell, editor, *Governments in Europe* (revised edition, New York, 1937), H. F. Armstrong, *Hitler's Reich: The First Phase* (London, 1933), Wickham Steed, *The Meaning of Hitlerism* (London, 1934), Fritz Ermarth, *The New Germany: National Socialist Government in Theory and in Practice* (Washington, 1936), Roy Pascal, *The Nazi Dictatorship* (London, 1934), G. Ruhle, *Das dritte Reich* (Berlin, 1935), A. M. van den Bruck, *Germany's Third Empire* (London, 1934), Calvin B. Hoover, *Germany Enters the Third Reich* (New York, 1933), H. J. Heneman, *The Growth of Executive Power in Germany* (Minneapolis, 1934), Gottfried Feder, *Hitler's Official Program and Its Fundamental Ideas* (London, 1934), and Adolf Hitler, *My Battle* (Boston, 1933).

The standard German work on constitutional questions in the Third Reich is Ernst Rudolf Huber, *Verfassung* (Hamburg, 1937). A monumental printed collection of the laws and decrees is contained in Werner Hoche, *Die Gesetzgebung des Kabinetts Hitler* (Berlin, 1933–1937) which has already run to twenty-three volumes. The more important of the earlier decrees are included in J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (Ann Arbor, Mich., 1934). Some are also printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part IV, pp. 9–202, and various other items are included in N. L. Hill and H. W. Stoke, *The Background of European Governments* (New York, 1935), pp. 412–446.

See also the biographical references at the close of Chapter XXXIV.

CHAPTER XXXVI

GERMAN POLICIES AND PROBLEMS

What I do know is that the Germans understand nothing of the spirit of man.—*H. G. Wells.*

In a previous edition of this book, published a half dozen years ago, there was a chapter on German political parties and politics. There can be no such chapter now, for there is only one political party in the Third Reich, and there is nothing that can be called party politics in any sense of the term. When an American talks politics he defends or defames the party in power, as may suit his own inclinations. The German either praises the National Socialist party or he doesn't talk politics at all.

GERMAN "POLITICS."

According to the Nazi political philosophy the German Reich rests on three pillars,—people, party, and state. The people (*Volk*) are the raw material out of which the edifice is built, hence they must be racially pure and undefiled. To attain the highest good of each individual they must be welded into a coördinated whole. In all their varied activities they must be actuated by a common purpose and work in unison under leadership. The party, on the other hand, has the function of planning this program of united effort and directing it, while the state lends the weight of its sovereign authority to the task of putting all the details of the program into effect. It is the instrument of the people whose will is expressed through the party. That being the case, there is room for only one party; no rival parties can be tolerated. The National Socialist party has the entire field to itself.

PEOPLE, PARTY, AND STATE.

The law of July, 1933, which gave the Nazi organization a monopoly in the arena of German politics is brief and to the point. It contains only two short articles as follows:

ONLY ONE POLITICAL PARTY NOW.

1. The National Socialist German Workers' party is the only political party in Germany.

2. Whoever undertakes to maintain the organization of another political party, or to form a new political party, is to be punished with imprisonment in a penitentiary up to three years. . . .

Thus is accomplished the complete coördination of the party with the Reich. The party, as such, has become an official branch of the German government. But unlike the Communist party in Russia the National Socialist party does not include in its membership only a small fraction of the German people. On the contrary it now claims members by the million, a great many of whom joined the caravan when it was nearing the promised land or after it had arrived. In its earlier stages the regular party organization admitted members quite readily, but of late its leaders have been inclined to close the gates upon the older generation. Recruitment is now made almost entirely from former Storm Troopers, the Hitler Youth, and the corresponding Union of German Girls. An "Aryan" pedigree, undiluted back to at least 1800, is an essential of admission. Organizations controlled by the party, such as the Labor Front, the Agricultural Estate, the Estate of Industry and Trade, and the Chamber of Culture have a combined membership which includes nearly the whole adult German population. The nature and work of these various organizations will be explained presently.

NAZI PARTY ORGANIZATION.

The headquarters of the National Socialist party are in Munich, where the movement originated. Its organization, like that of the government, is based on the principle of "leadership and discipline" Hitler is head of the party, as he is head of the Reich. But he has delegated most of the functions to a deputy leader. There is a party cabinet, with such departments as foreign affairs, defense, justice, propaganda, local government, racial policies, and so on. There are regional, district, and local organizations, each with its recognized leader and each in hierarchical subordination. There are recognized party representatives or agents in every German community and they must be consulted by the regular officials on various matters. The party is a corporation at law. Its constitution is determined by its leader. For the punishment of offenses against party discipline there is a regular ladder of party courts, with a supreme court on the top rung. These courts may impose fines or imprisonment.

ECONOMIC REORGANIZATION: INDUSTRY

National socialism in Germany has undertaken as its goal the complete refashioning of economic society while retaining the institutions of private property and capitalism. It is endeavoring to reconcile these institutions with the totalitarian idea which requires

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that all the activities of the people, whether political, economic, or cultural, shall be directly under the control and guidance of the state. It envisages a wartime organization of all these activities as a normal, and not merely as an emergency condition. Nothing can be left to go its own way and follow its own bent, for by so doing it might exert a counter-clockwise influence on the national solidarity. The government must be the agency through which all human interests, and not merely a few of them, are managed. This totalitarian concept provides a key to the understanding of what the Nazi government has done, during the past few years, not only in the domains of industry, labor, trade, agriculture, and finance, but in its extension of control over the churches, the press, and even the recreational activities of the people.

THE TOTALITARIAN IDEA.

The original Nazi program of twenty-five points contained a substantial number of pledges with respect to industrial reorganization and attempts have been made to carry some of these into effect. Beginning in 1934 German industry and commerce have been reorganized into an Estate of Industry and Trade under the ultimate control of the minister for economic affairs. The groundwork for this organization was provided by the various industrial associations, chambers of commerce, and handicraft bodies which already existed in Germany. All corporations and individual employers engaged in industry or trade are required to join one of the groups into which the Estate is divided and each group is further subdivided into sections. Each section and each group has a leader who is chosen either directly or indirectly by the minister for economic affairs. This leader is the representative of his group, even for legal purposes, and provides the government with a channel through which its direction of industrial activity can be made effective. But he has nothing to do with wages, hours, or other matters affecting the relations of employers and workers These are handled by shop councils and labor trustees as will be explained a little later.

ECONOMIC REORGANIZATION UNDER THE NAZIS.

These arrangements are in harmony with the Nazi principle of coördination. Until 1933 German industry was conducted on a basis of free competition although the government did intervene at times to prevent the more obvious evils arising under the competitive system. This intervention lessened the waste which free competition often

THE PRINCIPLE ON WHICH IT RESTS.

involves and put an end to some unfair business practices, but of course it did not terminate the rivalry between competing industries, each seeking its own profit and advantage. National socialism has no place in its philosophy for rivalry between different industrial groups or between different industrial classes, such as employers and workers. To use a favorite Nazi metaphor they are all soldiers in the same army of national solidarity. Even as a soldier obeys his officers because he realizes that obedience is the only way to victory, so the industrial army should obey the leaders who direct its efforts to the common good. Competition and class struggles have no place in such a scheme of things.

Heading this hierarchy of industrial leaders is the minister for economic affairs. It was expected in 1934 that the various groups within the Estate of Industry and Trade would be to a large extent self-regulating, but the ministry has assumed a steadily increasing control over all phases of German industrial life. By various forms of pressure it has compelled industries to merge, or to change the nature of their output, or their processes of production. Factories engaged in the production of essential supplies have been directed to move away from frontier locations (where they might be subject to air attacks) and to reëstablish themselves in the interior.[1] Industrial corporations have been directed to combine and set up new factories, particularly for the manufacture of experimental synthetic products, with heavy losses involved. In 1934 Hitler ridiculed the Soviet idea of a planned economy and declared that natural selection, with the survival of the fittest, must be the guiding principle in business. But it was not long before Germany went Russia one better with her Four Year Plan which calls for sacrifices from both employers and workers in order that the Reich may be fully rearmed and made more nearly self-sufficient in that length of time.

THE FOUR YEAR PLAN AND INDUSTRIAL AUTARCHY.

This Four Year Plan was inaugurated in 1936. It aims to procure the coördination of the entire economic resources of the Reich in such way as to serve a twofold purpose, (1) to expedite the program of remilitarization, and (2) to render the country independent of foreign supplies to such an extent that it can be virtually self-sustaining in time of war. This goal of economic independence is now commonly designated as "autarchy" In Germany the Four Year Plan

[1] E. C. Donaldson Rawlins, *Economic Conditions in Germany* (London, 1936), p. 83.

involves the curtailment of production along some lines in order that materials and labor may be available in other directions,—for example, to produce things which can be sold abroad and thus secure exchange for the purchase of essential raw materials. "Less butter and more cannon" is the way in which General Goering has expressed it. Autarchy is also sought to be achieved, under the Four Year Plan, by aggressively encouraging the production of synthetic motor fuel, cotton fibres or "cell wool," artificial rubber or "buna," and all sorts of other commodities which, in their natural forms, would have to be imported. Considerable success has been attained along these lines but it is not probable that complete self-sufficiency can be reached with so short a period as the present plan contemplates. The cost of these synthetic products, moreover, is higher than that of the natural commodities and the quality is usually inferior.

LABOR RELATIONS

LABOR RELATIONS UNDER THE NEW RÉGIME.

The Nazi program gave a pledge to reduce unemployment. The government did not propose to do this, however, by stimulating the labor unions to collective bargaining, with fewer hours of labor and more pay. On the contrary one of its first acts was to get rid of the existing labor unions as instruments of class warfare. Then a "Law for the Organization of National Labor" was put into effect (May, 1934). This law establishes the rights and obligations of both employers and employees in all business concerns. It forbids labor to organize by itself and outlaws the right to strike. Likewise it forbids lockouts. But it also provides that in every business establishment the employer shall be recognized as the leader (*Bertriebsführer*). As leader he is required (in all industries employing more than twenty persons) to have a confidential council (*Vertrauensrat*), chosen annually from among his workers, to advise on working conditions and help him improve the efficiency of his business. Members of this council are nominated by the employer as leader, but only in consultation with the leader of the Nazi "cell" organization among his workers. The list is then submitted to the workers who may reject any or all of the names. If an agreement cannot be reached, the workers may appeal to the labor trustee for their district. These trustees are public officials, appointed by the minister of labor. Each trustee in his own district is immediately responsible for the preservation of industrial peace and for the promotion of full coöperation between employer

and employed. He has authority to intervene and adjust wages or other working conditions when any serious disagreement arises between the employer and his workmen.

There is also in each district a "court of social honor," with a regular judge as chairman together with an employer and a representative worker as members. These courts hear complaints against employers or employees in cases where the public interest, and not merely the immediate interest of the two parties, is involved. If any employer "exploits his workers or offends their honor," or if employees "endanger the social peace by provocative behavior or undue interference with the management of the industry, or make unfounded complaints to the district labor trustee," or "if the workers divulge business secrets obtained at meetings of the confidential council," it is provided that the trustee may refer the matter "as a breach of social honor" to the court. Finally, there is a tribunal in Berlin, a supreme economic court of social honor, which has ultimate jurisdiction in these matters.

THE "COURTS OF HONOR."

When the trade unions were abolished in 1934 the employers' associations were also dissolved. In place of both there was established a new organization, known as the Labor Front (*Arbeitsfront*). Its function is to represent both capital and labor, including professional men and "white collar" workers. The Labor Front now includes nearly twenty-five million members, in other words virtually every German who is an employer, a professional man, or a worker employed otherwise than in agriculture. But it is not an organization for the protection of the workers against their employers. There are no labor organizations in Germany corresponding to the American Federation of Labor or the Committee for Industrial Organization. The National Socialist shop-cell organization (NSBO) is merely a link in the party chain.

THE LABOR FRONT.

In 1935 a decree was issued setting forth a plan for giving employers and employees equal representation in a series of Labor Front councils—national, regional, district, and local. These are intended to link the Labor Front with the Estate of Industry and Trade. A department of the Labor Front organization has also been established to promote "strength through joy" or bodily stamina through wholesome recreation after work-hours, and to establish a "just social balance." All the recreational clubs and athletic associations of the Reich have been brought into this *Kraft durch Freude* plan. The goal is a vacation, with pay, for

"KRAFT DURCH FREUDE."

every worker, and facilities for its proper enjoyment. The organization also promotes entertainments, outings, sports, games,—everything that may help to make the worker more efficient through a wise use of his leisure,—and incidentally more contented with the new régime. It has enabled millions of workers to attend theatres, concerts, and other entertainments at nominal cost and has also made it possible for millions to take vacation trips at a minimum expense. The Labor Front also maintains a "beauty of work" department which has done much to improve working conditions in German factories and shops by providing better restrooms, sanitary facilities, and sport fields, as well as by beautifying factory buildings and grounds.

METHODS OF REDUCING UNEMPLOYMENT.

Labor conscription was one of Hitler's remedies for unemployment when he took office, and it has been vigorously applied. Industries have been put under pressure to employ additional workers, whether needed or not. Men have replaced women in many industries, although women are now resuming their place in industry and business owing to a shortage in certain types of labor. Labor service camps have been established, with regular barracks, and all Aryan men, prior to their term of military service, have been ordered to work in them.[1] University students and all those desiring to enter certain professions, young women of well-to-do parents living at home,[2] and various other categories of youth have been required to spend a designated period at manual toil as "farm helpers" or in labor camps under the labor conscription decrees. Young workers by the thousand have been compelled to give up their jobs to older men, betaking themselves to the farms and camps. Many young men have also been taken into the military and naval service, for the regular armed forces have been greatly increased, and thousands of other workers have been given employment in establishments which are fabricating war vessels, arms, ammunition, airplanes, tanks, and other implements connected with the rapid rearming of the Reich [3]

Other factors have likewise helped to reduce the ranks of the un-

[1] A translation of the national service law (June, 1935), and supplementary orders may be found in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part IV, pp. 97–99.

[2] Labor service, however, has not been made compulsory for all young women.

[3] The armed forces of the Reich now constitute a *Wehrmacht* in three divisions, army, air force, and navy. The two years' term of compulsory service (*Wehrpflicht*) has been reëstablished.

employed in the Third Reich. The exodus of Jews, pacifists, aliens, and other proscribed classes has created something of a vacuum to be filled by new workers. A gigantic program of public works has also absorbed many workers. In addition to the award of public contracts for the building industry, the construction of roads and waterways, the launching of reclamation schemes, private activity in all lines has been encouraged by subsidies, loans, and tax exemptions. Such industries, for example, as automobile factories have been stimulated by the abolition of taxes on private motor cars. Other market-priming measures have been taken, moreover, such as subsidies to houseowners for repairing their property and marriage loans to young couples for the purchase of household furnishings. Double earnings, by man and wife, have been strongly discouraged in order to stretch employment over as many family units as possible. The migration of labor from rural areas to the cities, or from one city to another, has been put under restriction in order to prevent a local surplus of labor anywhere. Workers in certain trades have even been forbidden to leave one job for another if the local labor office finds that by so doing they may impair the efficiency of the enterprise with which they have been connected.

OTHER DEVICES.

Restrictions upon the free flow of labor are becoming steadily more comprehensive and more stringent. Farm workers have been warned (March, 1937) that any attempt to leave the land and engage in other occupations will be treated as desertion and punished accordingly. Certain areas, including Berlin and Hamburg, have been closed to all labor migration. In order to make the enforcement of these restrictions more manageable every employee earning less than a thousand marks a month (which includes virtually all of them) is required to carry a labor passport containing a full recital of his education, his vocational training, and the various jobs that he has held. When a worker applies for a new job he must submit this passport to his prospective employer. And employers in agriculture, as well as in certain industries, are authorized to withhold passports from workers who leave their jobs without proper cause. Thus the German Reich is well started on the road to a complete labor regimentation.

STABILIZING THE LABOR MARKET.

By these and various other governmental actions the number of unemployed in Germany has been greatly reduced. When Hitler came into power there were six million persons registered as unem-

ployed; in 1938 this total had been reduced to considerably less than a million, most of whom were either unemployables or persons moving from one job to another. This apparently striking achievement loses some of its impressiveness, however, when it is pointed out that persons in the labor camps or assigned by the authorities as virtually conscripted farm helpers are no longer counted as unemployed. The same is also true of various other groups subsidized or supported by the government. And much of the alleviation has been the result of government expenditures (for increasing the army, fabricating implements of war, building public works, etc.) which cannot be continued indefinitely. Nevertheless unemployment has been virtually eliminated in the Third Reich and there is an actual shortage of labor in many branches of German industry. The total number of employed persons when Hitler came into office was less than thirteen millions; in 1937 this had risen to more than seventeen millions.

PRESENT FIGURES OF UNEMPLOYMENT.

Unfortunately this reduction in unemployment has not been accompanied by a noticeable rise in wages or in the standard of living. It has not been the policy of the government to encourage any general increase in the level of wages paid to industrial workers, and the labor trustees, who are appointed by the government, have shared this point of view. The attitude of the Nazi authorities in this matter is dictated by a feeling that any general rise in the wages of labor at the present juncture would have three detrimental effects upon their own general program. It would greatly increase the cost of the government's rearmament enterprise. In the second place, it would increase the level of prices in Germany, thereby curtailing exports, stimulating imports, producing a more strongly adverse balance of trade and diminishing Germany's capacity to buy raw materials abroad during the years before she attains her goal of autarchy. Finally, in the opinion of the Nazi leaders, it would probably start a vicious circle of inflation within the Reich. This objection has been very plainly stated by Hitler himself:

THE WAGE LEVEL.

> Raise wages and you raise prices; then you raise wages again; after a while we would have to devalue the German mark and cheat the saving public; then we would have to raise wages again, and so on. Do you believe that such actions would make the German people happier? Neither the wage nor the wage rate is of major importance; what matters

is the total production and the share of it which goes to every participant in production.

The average yearly earnings of the German worker, stated in monetary terms, was less than two thousand marks in 1933. It was still under two thousand marks in 1936. On the other hand the hours of labor have been lengthened. In the summer of 1936 more than eighty per cent of the employed workers in Germany were covering a forty-eight hour week or longer.[1] Meanwhile the amounts deducted from each worker's wages for taxes, social insurance, dues in the Labor Front, and more or less involuntary contributions to various other Nazi funds have considerably increased. Together these burdens are said to take about one fourth of the average worker's earnings.[2] To make matters worse, the cost of living has risen since Hitler's advent to office, notwithstanding the government's effort to keep prices down. While the price level for agricultural products has been permitted to rise somewhat, the government's policy is to keep all other prices well pegged. To accomplish this a Commission of Prices has been appointed, with comprehensive power to forbid price advances. But in spite of this the cost of living has risen more than the government's statistics indicate, for these figures do not take into account the widespread evasions of the official price lists, especially in the case of such foodstuffs as are scarce, nor do they reckon with the deterioration in quality which has resulted in many cases from the effort to keep prices down.

WAGES AND THE COST OF LIVING.

What, then, has the German worker gained from the new order? He works longer hours, has gained no appreciable increase in wages, pays more for what he consumes, and has lost the right to strike. On the other hand he has seen unemployment virtually eliminated and jobs provided for everyone who is able to work. Security for the worker, such as it is, has been established for the time being. He has been released from the haunting fear of losing his job. Vacations with pay have become general. Comfortable and attractive small dwellings have been built under the government's sponsorship for rental at low rates to workers in industry. A better environment for work has been pro-

THE WORKER'S BALANCE SHEET.

[1] This estimate was made by the International Labor Office in its bulletin of *Industrial and Labor Information*, July 27, 1936.

[2] John C. deWilde, *Social Trends in the Third Reich* (Foreign Policy Reports, Vol. XIII, No. 4, May 1, 1937), p. 50.

vided and more ample opportunities for a worth-while use of his leisure hours. Incidentally, as the figures show, he manages to consume a good deal more beer, wine, and tobacco than he did before Hitler came to the throne.

THE CONTROL OF FOREIGN TRADE

When the Nazi government came into power in 1933 Germany's exports exceeded her imports by a considerable margin, although the excess had been reduced by the banking crisis of two years previously. The difference provided foreign exchange with which to pay German obligations abroad. But when other countries devalued their currencies, while Germany did not, exports from the Reich rapidly declined and imports increased until an unfavorable balance resulted in 1934. It then became the policy of the government to discourage imports and to limit them, as far as possible, to purchases from countries which would agree to buy an equivalent amount of goods from Germany. Agreements along this line were negotiated with a number of countries. Preference was given to raw materials and when these were imported the public authorities rationed them to the various industries.

THE BALANCE OF TRADE.

This system of controlling imports has not only been continued but stiffened. It has gradually forced trade out of natural channels into purely artificial ones. Germany, during recent years, has not been importing largely from countries where goods could be bought most cheaply but from countries with which quota agreements could be negotiated. Thus cotton importations from the United States have fallen off, while purchases of Brazilian cotton have increased although the latter costs more and is not of equal quality. German industry has been considerably hampered by this rigid control and rationing of imported raw materials. The evils of the system have been accentuated, moreover, by the policy of giving a strong preference to those materials which have been needed in the manufacture of armaments and munitions.

CONTROLLING AND RATIONING IMPORTS.

In addition to this regimentation of imports, every effort has been made to secure a favorable balance of trade by stimulating exports. Liberal subsidies have been granted to exporters on the theory that such subventions constitute a sort of inverted tariff, making good the disparity between German and foreign price levels. Funds for these subsidies have been ob-

SUBSIDIES TO EXPORTS.

tained by levying a tax on German industries based upon the amount of their domestic sales. The volume of exports has been increased by the subsidy plan, but the cost is very large and some countries have resented this form of competition in their own markets. Yet Germany is in a situation where she must keep up her export trade, for she requires a large volume of imports (such as metal ores, oil, wool, hides, etc.) and the only way to pay for them is by exporting goods of similar value. The Reich has no adequate gold reserve with which to liquidate an unfavorable trade balance. All this, while ostensibly a problem in international economics, is in reality a critical problem of governmental operation. For the Nazi government, in order to provide the people with employment, must keep the industries going, and the industries need raw materials which have to be imported, and imports have to be paid for—unless they can be exploited out of colonies or other dependent territories. Right here, accordingly, is a problem which gravely menaces the peace of the world.

AGRICULTURE

Agriculture has fared better than industry. Among all classes in Germany the farmers seem to have profited most from the new order. For the government's policy has been to raise the price level of agricultural products to a parity with those of industry, and the measures taken for this purpose have been notably successful. German agriculture has been coördinated in all its branches under the *Reichsnährstand* or Agricultural Estate, an organization which includes in its membership all those who are concerned in the production and distribution of agricultural products. The organization has a leader at its head, does its work through sections and regional associations, and has as its principal function the winning of "the battle of production,"—in other words the making of Germany self-sufficient in fodder, foodstuffs, and various other products of the soil. It works in close coöperation with the minister of food and agriculture in the national government. Between them a complicated, but apparently effective, system of regulating prices and production is being maintained. A close control is kept over the supply of farm products and disturbing oscillations in prices are thereby prevented. By means of various offices, all over the country, the prices paid to farmers, as well as to processors, wholesalers, and retailers of food products are strictly regulated. The Food Estate also

THE GOAL OF AUTARCHY IN FOODSTUFFS.

confiscates the difference between foreign and domestic prices of agricultural commodities so that the latter level can be maintained without regard to importations from other countries.

The German farmer has also been benefited by a reduction in interest rates on mortgages. Among Hitler's twenty-five points there was a pledge to relieve German agriculture from "slavery to interest," but this promise has been redeemed in part only. Interest has been reduced but not eliminated, and mortgage indebtedness has been somewhat scaled down. It is estimated that by these measures the interest-burden on German agriculture has been reduced by about one fourth. The tax burden on the farmer has also been lessened by transferring a portion of it to the industrialist. The wages of agricultural labor have not appreciably risen and the government has helped the farmer by sending him subsidized helpers under the labor conscription plan. All in all, he is better off than he used to be. And this has been the government's intention, for it looks upon the agricultural classes as the very foundation of Germany's racial and economic solidarity.

LAND TENURE AND RESETTLEMENT.

The Nazi program also made various promises along the line of land nationalization and the breaking-up of large rural estates, but these pledges have not yet been entirely fulfilled. The government has not ventured to compel the large landowners, of whom there are many in the Reich, to subdivide their estates into small farms and sell them. Many large landed proprietors, however, have voluntarily sold their holdings to the government which has undertaken resettlement projects upon the divided lands, especially in East Prussia and Pomerania. On the other hand, by the provisions of the hereditary farm law (1933) all farms of less than 300 acres which are capable of supporting a family have been converted into hereditary farms. About 700,000 farms have been so converted. The purpose is to stabilize agriculture by keeping farm families on their land, generation after generation, as in France. On the death of its owner a hereditary farm passes to his eldest son or nearest male relative, who in turn assumes responsibility for the maintenance and education of his younger brothers and sisters until they become of age. Hereditary farms cannot be sold, mortgaged, divided, or attached for debts. This arrangement has to a considerable extent placed a damper on speculation in agricultural land. On the other hand it has made it more difficult for farmers to obtain credit.

THE NAZI ATTITUDE TOWARDS PRIVATE PROPERTY

Assurances have been repeatedly given that national socialism has no intention of abolishing private property or eliminating private initiative in business. Both are regarded as essential to maximum production. But both must be placed under governmental regulation which means that private property is respected, and private initiative fostered, only to the extent that the government finds it desirable. Hence the government has not hesitated to reduce interest rates or to limit profits by decree. Business corporations are forbidden to pay dividends exceeding a certain rate; all surplus earnings must be invested in government bonds. Moreover the taxes on corporations have been raised to a point where the earning of even a reasonable rate of dividends has become difficult. While professing adherence to the principle of competition, moreover, the government has set up monopolies in certain lines of trade, particularly in those that have to do with imported and exported commodities. Private property remains in Germany, but under rigid public control. Private initiative remains in industry but under stringent public regulation.

THEORY AND PRACTICE.

Socialism has been traditionally defined as a system under which the agencies of production and distribution are taken over by the state. But the Nazi brand of socialism is not socialistic in that sense. The German government since 1933 has not taken over any of the great industries. It has not extended the field of government ownership. On the contrary it has sold to private individuals most of the shares in industries and banks which were acquired during the era of the Weimar Republic. Large government holdings in shipyards, machine industries, steel works, navigation companies, and banks have been sold during the past few years in order to obtain additional funds for public use. On the other hand the great iron works, named for General Goering, which were created during 1937, represent a substantial venture into the field of direct government enterprise. For the most part, however, national socialism does not feel the necessity of having the state own property in order to control it. The same end, it has been found, can be reached by a sufficient regulation of private ownership. And if socialism ever comes in the United States, it may be hazarded, it will arrive in that form. "You take my life," said Shylock, "when you do take the means whereby I live." And you take a

PUBLIC OWNERSHIP.

man's property when you take away all his freedom in the use of it.

The extensive program of rearmament, public works, resettlement, subsidies to industry, encouragement of exports, relief of unemployment, labor camps, and nation-wide regulation has naturally required a vast expenditure of money. To some extent these expenditures have been met by increasing taxes, especially on corporation profits and incomes, but in the main the money has been borrowed. Much of it has been obtained by what virtually amounts to forced loans from the banks as well as from industries and organizations which happen to have surplus funds available. The resources of savings banks and insurance companies have been almost entirely mobilized into government loans. In this way the liquid resources of the German banks and other credit institutions have become greatly depleted, but the stimulus given to production and incidentally to industrial profits by the rearmament program during the past few years has provided additional funds for governmental recapture. It should be pointed out, moreover, that a good deal of what would ordinarily be government expenditure is defrayed by ancillary organizations such as the Estate of Industry and Trade, the Food Estate, and the Labor Front. These organizations collect and spend at least two billion marks per year in dues. Funds are also raised by numerous other bodies for public and semi-public purposes by campaigns which are so intensive as to leave no one exempt from virtual compulsion.

WHERE THE MONEY COMES FROM.

Forced loans and the steadily increasing levies upon private property naturally caused an exodus of capital from Germany. People having available funds transferred them into foreign investments. But the government soon put an end to this. The exportation of capital has been made severely punishable,—the death penalty being prescribed in certain cases. All foreign securities held in Germany have been ordered to be deposited in government banks. If need be, the government can direct these banks to sell the securities abroad and use the proceeds to pay for imports of raw materials. The owners of the securities, in that event, would be required to take German government bonds in compensation. There is reason to believe, however, that many foreign securities have been smuggled out of the country—chiefly across the Swiss border—and that capital continues to trickle out of the Reich despite even death-penalty restrictions.

THE FLIGHT OF CAPITAL.

THE COÖRDINATION OF THE CHURCHES

According to the totalitarian theory religion and education, as well as agriculture and industry, must serve the state and be under its control. The citizen's soul, as well as his body, must be coördinated into the service of the commonwealth. Freedom of religious belief does not reconcile itself with any form of totalitarianism, Nazi or Fascist, because it evokes loyalty to concepts which are above and beyond the state. It permits men to ally themselves with religious faiths which glorify peace and human brotherhood, whereas force, combat, struggle, and race hatred are the watchwords of the Nazi cause. And in the case of Catholic Christianity it links them to an ancient church which, from Canossa to Kulturkampf, has never bowed the knee to Baal.

THE PLACE OF RELIGION IN THE TOTALITARIAN STATE.

In Germany before the establishment of the Third Reich there were about thirty recognized Protestant denominations, and the government was determined that these should be united into one national church under state supervision. But the various Protestant denominations, as a way of forestalling this subordination to the political authorities, combined themselves into a German evangelical church union and chose their own bishop to be at its head. This choice, however, did not suit the government, which turned to a rival group of Nazi Protestants, organized under the aegis of the National Socialist party, calling itself German Christians. Prominent in this group was a former army chaplain, a close friend of Hitler's, and one of his principal advisers on church matters. This clergyman, Dr. Ludwig Müller by name, desired to become the head of German Protestantism and the government supported his ambition. Between the two organizations a controversy arose and it was finally decided that the questions at issue should be decided by vote of the entire church membership. In the weeks that preceded this referendum the government and the National Socialist party directed their energies and propaganda in Dr. Müller's favor, as a result of which he became *Reichsbischof*, or head of the combined Protestant churches.

THE PROTESTANT CHURCHES.

But this referendum did not settle the issue. Opposition to the new bishop was organized within the church on various grounds and the conflict developed into a very bitter one. Attempts were made to stifle the insurgency by dismissing hundreds of clergymen from their

pastorates, or even arresting them, but the campaign of repression did not succeed. Finally matters came to such a pass that Hitler himself intervened in characteristic fashion. He deprived Reich Bishop Müller of all secular powers, placed the Protestant churches under direct state control, appointed to his cabinet a minister for church affairs, and gave this minister full authority over the church in all matters of organization and discipline. Thus the evangelical churches of Germany have been subordinated to the government of the Reich, but they have not accepted this outcome cheerfully and the opposition is still active[1] Pastors have gone to jail for the cause and are being regarded by the faithful as martyrs.

NOW PLACED UNDER GOVERNMENT CONTROL.

A similar and not-yet-concluded struggle to coordinate the Catholic Church in Germany has also been going on. Not long after it came into power the Nazi government sought to enter into a concordat or treaty with the Papal authorities which would more clearly define the place of the church in the Reich. And in due course a concordat was arranged, with concessions on both sides. By its terms the Catholic Church in Germany was given the same recognition as the combined Protestant churches, with the same rights and privileges. Bishops and archbishops were to be named by the Pope, as formerly, but only after consultation with the German government. They and the clergy were to keep themselves aloof from all political activities. Associations of Catholic laymen and church schools were to be left alone provided they maintained a similar aloofness.

THE CATHOLIC CHURCH AND THE CONCORDAT OF 1933.

But the concordat did not sufficiently coördinate. Controversies soon arose over the meaning of certain provisions, especially those relating to church schools and to such organizations as the Young Men's Catholic Association. The Nazi leaders were determined that all organizations of young Catholics should be absorbed into the Hitler Youth, and that various church schools should be turned into agencies for the indoctrination of their pupils with the National Socialist philosophy. All this led to friction as well as to charges and countercharges of bad faith. Relations between Berlin and the Vatican became increasingly

THE CONTINUING FRICTION.

[1] For a popular account of the struggle see G. N. Shuster, *Like a Mighty Army* (New York, 1935), also Paul F. Douglass, *God among the Germans* (Philadelphia, 1935).

strained. Today the situation is one of thinly veiled hostility on both sides. Encyclicals and other church pronouncements have berated the government, while the latter has retaliated by unearthing various scandals in which Catholic clergymen were alleged to be involved,—for example, the smuggling of money and securities out of the country in violation of the law. It is generally believed that sooner or later, if the Nazis retain their power, the Concordat of 1933 will be abrogated and the Catholic Church coördinated with the Reich as the other ecclesiastical organizations have been.

THE UNIFICATION OF CULTURE

EDUCATION AND SCHOLARSHIP.

The coördination of all the cultural organizations and activities of the Reich has been a primary aim of the Nazi government. The universities and the schools have been transformed into agencies for the indoctrination of German youth with the totalitarian philosophy. "If the older generation cannot get accustomed to us," said Hitler, "we will take their children away from them and rear them as needful for the state." There has been an occasional "pogrom of books," the burning of volumes and pamphlets that have been written by non-Aryans or that have been found deficient in a truly nationalist spirit. History and literature, science and art, have been revamped in their interpretations to serve this end. Special emphasis is everywhere placed upon the doctrine of Nordic superiority and the manifest destiny of the reconstructed fatherland. Learning and scholarship have been completely diverted into political channels. Academic freedom has been stigmatized as democratic nonsense. Teachers must think as the leader thinks. Knowledge and liberty of thought have parted company.

THE PRESS IN GERMANY.

The other agencies of public enlightenment have also had their efforts "coördinated to a united and organized purpose." There is no longer a free press in Germany. In 1933 a "ministry for public enlightenment and propaganda" was established by decree and given power "to deal with all measures of mental influence upon the nation." [1] Save in the most exceptional instances there is no printed criticism of the Hitler government. The new régime is not yet entirely unified within itself and accordingly there are factional differences which still find themselves

[1] For a translation of this decree see W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part IV, pp. 21–23.

occasionally reflected in the newspapers. The authorities sometimes inspire critical comments in the newspapers for the purpose of proving to the world that the German press is free. But while there may be differences of opinion as to what the Nazi authorities ought to do, there are none as to their being the right ones to do it. No person can be employed on a newspaper in an editorial capacity unless he is approved as acceptable by the Reich ministry of propaganda. Editors are required by law to withhold from publication everything which "tends to weaken the will towards unity of the German nation," in other words everything which tends to impair the government's complete control of the national life. And newspapers can be suppressed at any time to prevent "unsound competition," according to the press decree of April, 1935. This gives the government a life-and-death power over all of them.

A LOOK BACKWARD.

In no way can one more vividly realize the changed conditions in German newspaperdom than by comparing the "freedom of the press" clause of the Weimar constitution with Hitler's pronouncement on this subject. The republican constitution of 1919 provided that:

> Every German has the right, within the limits of the general laws, to express his opinion freely by word, writing, printed matter or picture, or in any other manner. No circumstance arising out of his work or employment shall burden him in the exercise of this right, and no one shall discriminate against him if he makes use of it.[1]

But here is the way in which Hitler puts the matter:

> It is of primary interest to the state and nation to keep the people from falling into the clutches of unscrupulous, ignorant and even malicious teachers. Therefore it is the state's duty to supervise the education of the people and prevent any mischief. In particular it must maintain a close check upon the press, for its influence upon the people is by far the strongest and most forceful of all, since its activity is not ephemeral but continuous. Its immense influence results from the uniformity and constant repetition of its teaching. The state must not forget that here, if anywhere, all means must serve a single end; it must not be misled by prattle about the so-called "freedom of the press." [2]

No meetings for the discussion of public issues are permitted except under official supervision. All the channels of public informa-

[1] Article 118.

[2] *Mein Kampf* (Munich, 1925), Vol. I, p. 255.

tion have been brought under the immediate supervision of a "chamber of culture" which operates under the ministry for public enlightenment and propaganda. The radio is controlled by one section of this chamber; motion pictures are under the supervision of another. A third section controls all musical entertainments, while a fourth keeps a watchful eye on painters and sculptors. Authors of books and pamphlets are also brought under supervision by a section of this all-embracing organization. The rigid censorship of newspapers, magazines, radio broadcasting, theatres, motion pictures, books, art exhibits, and even concert halls, is defended on the ground that "it has become necessary for the combating of trash and obscenity, as well as to unite creative art in all fields under the leadership of the Reich."

PROPAGANDA AND PUBLIC ENLIGHTENMENT: THE CHAMBER OF CULTURE.

Of course it is difficult for any American to appreciate the vast moral influence which the Nazi government has been able to exert through its control of every channel through which the people may obtain ideas, information, opinions, or enlightenment. And any sign of recalcitrancy on the part of those who refuse to let their activities be coördinated, whether inside or outside the government, brings speedy retribution. Even in dealing with its own friends, when they are suspected of non-coöperation, the government has been quick and ruthless. One may recall, as an example, the "blood purge" of June, 1934, when Herr Hitler took the responsibility for shooting, without trial, General von Schleicher, a former chancellor, Captain Ernest Röhm, who had been one of his stanchest friends, and many others who were thought to be critical of the government's policy.

GERMANY AND THE OUTSIDE WORLD

National socialism in Germany has steadily become less socialist and more nationalist. The government of the Third Reich is not a socialist government at all, if one uses the term in its customary sense, that is, a government which takes over and operates the instrumentalities of production and distribution. Yet it claims to be socialist, and may become so in time, for the Labor Front is very influential and its pressure is in that direction. Meanwhile the energies of the government have been largely concentrated upon the gigantic problem of rearming the Reich and making it self-sufficient in time of war by completing the Four Year Plan. Its attitude toward the outside world has

THE GOALS OF NAZI FOREIGN POLICY.

been set forth to some extent in the official Nazi program, but more elaborately in Hitler's writings and speeches. One of Germany's avowed objectives, the absorption of Austria into the Reich, has already been accomplished. Another is the securing of territory to the east, at the expense of Russia. If Germany could have the mineral wealth of the Urals and the agricultural resources of the Ukraine, as Hitler truculently boasted on one occasion, she would be able to fulfill her manifest destiny. A third external design is the abolition of the Polish corridor which now divides Prussia into two parts, while a fourth is the restoration of the German colonies or the acquisition of equivalent overseas territory. The reduction of Czechoslovakia to the status of a vassal state may be looked upon as the fifth Hitler objective. In addition the original Nazi program called for a repudiation of all the burdensome provisions of the peace treaties, and this repudiation was made in dramatic fashion soon after Hitler came into office. During the republican era Germany had been admitted to membership in the League of Nations, but in 1933 she withdrew and this action was subsequently endorsed by the German people at the polls.

NAZI PROFESSIONS OF A DESIRE FOR PEACE.

Nevertheless the German government has repeatedly expressed its strong desire for the maintenance of European peace. In 1935 Hitler gave to the Reichstag a full exposition of his views on Germany's attitude toward the rest of the world and in this address he disavowed all imperialist designs.[1] The remilitarization of the Reich, he explained, implied no threat to anyone. It was merely a logical outcome of the fact that other European countries had failed to disarm as they had promised to do by the terms of the Versailles Treaty. Germany's rearmament, according to Hitler, merely restored the equilibrium of power in Europe which had been upset to her disadvantage as a result of the World War. The actions of the German government, however, have not always squared with these professions of peaceful aspiration. Nazi propaganda has been actively carried on in the Near East, in South America,—even in the United States. An understanding has been concluded with Japan and it is obviously aimed against Russia. In coöperation with Italy the German government has aided the insurgents in Spain. Demands for the restoration of the former German colonies have been reiterated from various official sources.

[1] May 21, 1935.

The Austro-Hungarian empire had been dismembered as the result of the peace treaties at the close of the World War. From its ruins, in whole or in part, six new states arose—Austria, Hungary, Poland, Czechoslovakia, Yugoslavia, and Roumania. Austria, in her post-war emasculated form, was left with an area smaller than that of Indiana and a population less than that of New York City. This population, however, was largely German, in contrast to the polyglot racial structure of the old Austro-Hungarian empire. For twenty years the new state struggled to maintain a republican form of government which was considerably reorganized in 1934 but never succeeded in unifying public sentiment. A strong Nazi movement developed in Austria after Hitler's accession to power in Germany and the German government did what it could to encourage this development. Finally, in the spring of 1938, a demand came from Berlin that the Austrian Nazis be given important places in the Vienna ministry.

THE AUSTRIAN ANSCHLUSS.

Being too weak to refuse this demand the Austrian government acceded and at once the new Nazi ministers took not only a share in the government but control of it. Declaring that civil war in Austria was imminent they invited German intervention. The German government quickly responded by sending troops into Austria; the existing government was abolished and the territory annexed to the Reich.[1] To endow his actions with a color of legality, Hitler at once ordered that a plebiscite be held in Austria, and at this popular election the *fait accompli* was overwhelmingly ratified. Under the circumstances the Austrian voters had no alternative.

Austria, as an independent nation, passed off the map of Europe after having occupied a place there for nearly a thousand years. The German leaders thereupon proceeded to "coördinate" the political and economic organization of this new territory with their own land. A central European axis has been established from the Baltic to the Mediterranean, from Danzig to Palermo. What Hitler's next move will be, whether in the direction of Czechoslovakia or elsewhere, it would be folly to predict. Predictions in politics, as Francis Bacon once said, should be confined to winter talk by the fireside.

The Treaty of Versailles deprived Germany of all her colonies

[1] For a discussion of the events leading up to Austria's absorption see M. Margaret Ball, *Post-War German-Austrian Relations: The Anschluss Movement, 1916–1936* (Stanford University, 1937).

without compensation. They were converted for the most part into mandated territories and placed under the administration of those Allied powers to which the League of Nations chose to entrust them. It should be explained, perhaps, that instead of actually dividing the spoils of victory among the victors, the framers of the Versailles Treaty provided that these territories should be given to the League of Nations and should by that body be administered through "mandates" given to individual governments. Each mandatory makes an annual report to the League.

THE COLONIAL QUESTION.

Under this arrangement the greater portion of German East Africa was mandated to Great Britain, but a share was placed under Belgian tutélage and a small area was given to Portugal. German Southwest Africa went under mandate to a British dominion, the Union of South Africa. France obtained a mandate for the greater portion of the Cameroons, but a smaller part was delegated to British supervision. A large remaining area was given to France in full ownership. Togoland was divided into two portions, one mandated to Great Britain and the other to France. In the Pacific the former German islands were apportioned under mandates to Great Britain, Australia, New Zealand, and Japan.

WHAT BECAME OF THE OLD COLONIES.

It is argued that through the loss of her colonies Germany has been "left with too small a life-space for her population." [1] While the Third Reich is making every effort to extract from its own area what is needed for reasonable economic security, the available resources do not entirely suffice. Such security might perhaps be obtained by commercial agreements with other countries, but the growth of economic nationalism throughout the world is making it steadily more difficult to obtain favorable trade agreements anywhere. And even if such agreements could be made they might not prove dependable in time of crisis. So the allotment of colonial space to Germany, it is said, affords the only permanent and satisfactory solution for existing difficulties.

WHY GERMANY WANTS THEM BACK.

The trouble with this solution is, first, that all the former German colonies put together would not furnish the Third Reich with any considerable part of her raw material requirements, and, second,

[1] See the pamphlet by Dr. Hjalmar Schacht, President of the Reichsbank, entitled "Why Germany Requires Colonies" (Berlin, 1936).

that the restoration of these colonies would entail sacrifices which the mandate-holding nations and dominions will not make unless they have to do it. The former German colonies, it is true, do not now belong to them but to the League of Nations. On the other hand the present mandatories realize that if the League goes to pieces the mandated territories will revert to them. It is conceivable that through negotiations and mutual concessions Germany might be given back some of her former colonial possessions in the interest of world peace; but the atmosphere of Europe will have to clear considerably before this can come to pass. It is also conceivable, although not probable, that the Nazi government might press its demand for the restoration of the German colonies to the point of war,—not probable because Germany has more to gain by keeping on good terms with Great Britain. When war comes it is likely to have its inception in some other quarter. There are many issues in Europe more explosive than the German colonial question.

THE DIFFICULTIES INVOLVED.

In conclusion it may be repeated, by way of summary, that two words provide a key to the cardinal principles on which the totalitarian Third Reich is based. The first is Coördination (*Gleichshaltung*); the second is Leadership (*Führerschaft*). By the former is meant the constraining of every human activity into line with the policies of the sovereign authority. It implies the end of competition in social purposes, such as exists in democratic countries. Party controversies, freedom of individual belief and opinion, the right to go one's own way,—they are all cancelled out. The unification of all his efforts towards a single goal is the obligation of every citizen. By leadership is meant the flow of all authority from the top downwards rather than from the bottom up. Theodore Roosevelt once said that the difference between a leader and a boss is that the leader leads and the boss drives. On that basis the German *Führerschaft* might be translated into a shorter and uglier English word than leadership. For it connotes the idea that power does not emanate from the people but from one who has arrogated supreme authority to himself with the aid of his party cohorts. And this idea goes right down the line into all the subdivisions of government as well as into agriculture, industry, commerce, religion, education, and every other branch of German life. There is no human activity in the Third Reich which does not have its leader, and the mission of this leader is not to lead but to drive.

THE NAZI PHILOSOPHY.

Under this arrangement the individual citizen becomes a single drop of oil upon the vast mechanism of state supremacy and unification. His soul, mind, and will are dissolved into the personality of the state, of which its leader is the expression. Was it for such that the spirit of man came into being?

In addition to the books mentioned at the close of the two preceding chapters, mention may be made of H. A. Phillips, *Germany Today and Tomorrow* (New York, 1935), Mildred S. Wertheimer, *Germany under Hitler* (World Affairs Pamphlet No. 8, New York, 1935), Wickham Steed, *Hitler: Whence and Whither* (London, 1934), F. L. Schuman, *The Nazi Dictatorship* (2nd edition, New York, 1936), A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), H. L. Childs, editor, *Propaganda and Dictatorship* (Princeton, 1936), C. S. Macfarland, *The New Church and the New Germany* (New York, 1934), Konrad Heiden, *Hitler: A Biography* (New York, 1936), Stephen H. Roberts, *The House that Hitler Built* (New York, 1938), and Charles Cunningham, *Germany Today and Tomorrow* (London, 1936).

On the economic developments under Hitler the most comprehensive source of facts and figures is E. C. Donaldson Rawlins, *Economic Conditions in Germany to March, 1936* (London, 1936), but mention should also be made of two recent Foreign Policy Association Reports by John C. deWilde entitled *The German Economic Dilemma* (March 1, 1937) and *Social Trends in the Third Reich* (May 1, 1937), also Hermann Levy, *Industrial Germany; a Study of Its Monopoly Organizations and Their Control by the State* (Cambridge, England, 1935), John B. Holt, *German Agricultural Policy, 1918–1934* (Chapel Hill, N. C., 1935), C. S. R. Harris, *Germany's Foreign Indebtedness* (London, 1935), H. S. Ellis, *German Monetary Theory, 1928–1933* (Cambridge, Mass., 1934), Vaso Trivanovitch, *Economic Development of Germany under National Socialism* (New York, National Industrial Conference Board, 1937), and M. de Saint-Jean, *La politique économique et financière du Troisième Reich* (Paris, 1936).

The colonial ambitions of the Third Reich are explained in G. K. Johannsen and H. H. Kraft, *Germany's Colonial Problem* (London, 1937), and in Dr. Hjalmar Schacht's pamphlet on "Why Germany Requires Colonies" (Berlin, 1936).

Translations of decrees and other documents are included in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), as well as in Norman L. Hill and Harold W. Stoke, *The Background of European Governments* (New York, 1935).

An up-to-date survey of *The Nazi Government of Germany*, by J. K. Pollock, is now in course of publication.

CHAPTER XXXVII

ITALY AND THE FASCIST REVOLUTION

The relations between the state and the individual are completely reversed by the fascist doctrine. Instead of the old democratic formula "society for the individual," we have the new formula "individuals for society"—*Alfredo Rocco.*

Buttressed on the north by the Alps, and ribbed throughout its course by the Apennines, the kingdom of Italy thrusts itself into the Mediterranean. Or, to use Petrarch's classic aphorism

. . . il bel paese
che Appennin parte, il mar circonda è l'Alpe.

No country in Europe has had a longer and more interesting political history. It contains two regions which differ widely in their physical characteristics, namely, the northern or continental region which includes Lombardy, Piedmont, Tuscany, and Venetia, and the southern or peninsular division, which comprises not only Rome and its adjacent territories, but the old kingdom of Naples and the islands of Sardinia and Sicily. Napoleon Bonaparte used to say, "Italy is too long." The entire kingdom comprises about 90,000 square miles, which is slightly more than the area of Kansas. But the population of Italy exceeds 42,000,000, which is more than that of all the American states west of the Mississippi.

THE KINGDOM OF ITALY.

The earliest history of this peninsula is known only through the classic legends. It was then inhabited by a variety of tribes. At some time prior to 700 B.C. came the founding of Rome and in due course the sway of this city was extended in all directions until it eventually spread over most of the then-known world. Thus Italy became and for several centuries remained a world empire, the center of world culture and civilization. All roads led to the Eternal City, a proud metropolis with a population of over a million.

ITS EARLY HISTORY.

Then ensued a long period of decline in Roman power and its ultimate collapse in the fifth Christian century. The barbarians from the north came down into Italy, overran it, sacked its cities, wrecked its government, and turned the land into a desolation. Next followed the

periods of Gothic, Byzantine, Lombard, and Carolingian domination—each with its own vicissitudes. Much could be written on the history of this lurid interval of five centuries from 500 to 1000 A.D., but it would not be appropriate here. It is enough to say that banditry and disorder got the upper hand in spite of all that either the civil or ecclesiastical authorities could do.

ITALY IN THE LATER MIDDLE AGES AND EARLY MODERN PERIOD.

With the beginning of the eleventh century signs of a revival appeared. The cities, particularly in the northern part of the peninsula, began once more to grow and flourish. Princes and dukes, as well as communes and republics, were able to stabilize their power in a host of small states and to maintain a semblance of discipline although they were frequently at war with one another. By the close of the middle ages the time had become ripe for the welding of these jarring areas into a unified nation; but unhappily no unification was achieved. On the contrary this civil warfare paved the way for an era of foreign domination which proved to be long continued. England and France attained the goal of unity; Italy did not. She remained a geographical expression down to the later half of the nineteenth century. Local jealousies, regionalism, foreign control, and a lack of national consciousness contributed to make it so.

THE GENESIS OF UNIFICATION.

THE WORK OF NAPOLEON.

The beginnings of progress toward the unification of Italy date from the years 1796–1799 when Napoleon Bonaparte invaded the land with his ever-victorious armies and brought the whole territory under his control. Thereupon, in true Napoleonic fashion, he combined many of the small states into a Cisalpine Republic, and finally united the entire peninsula under French tutelage. To all of it he extended the Code Napoléon and the French administrative system. In this way he stamped upon Italian political and legal institutions an impress which they bear to this day. But this unification of Italy proved to be brief for it went to pieces when the Napoleonic empire collapsed. Nevertheless it gave the Italian people a new vision and revived among them their old consciousness of a common nationality. Thus it was the rise of a Bonaparte that first created among the Italians, as among the Germans, a determination to be united under a government of their own. And, curiously enough, it was the fall of another Bonaparte (1870) that in both cases enabled this unification to be consummated.

In 1814–1815 the Congress of Vienna met to realign the bound-

aries of Europe which the long wars had so rudely disturbed. One of the most difficult questions confronting the Congress was what to do with Italy,—and, as it happened, Italy had no friends at this Congress. Austria, for her own advantage and security, desired that Italy should remain disunited and weak. It was likewise Austria's ambition to dominate all the Italian states which lay within reach of her own frontier. So Italy was once more dismembered. Austria recovered Venetia and the duchy of Milan. Parma, Modena, Tuscany, Naples, and various other states were placed under foreign rulers. The Pope was confirmed in his possession of Rome and the Papal States. The kingdom of Sardinia, including Savoy and Piedmont (with the addition of Genoa), was the only one left with an Italian dynasty. Thus Italy became once again a land of shreds and patches, as it had been before the Bonapartist invasions.

ITALY AFTER NAPOLEON'S FALL.

But the Congress of Vienna, although it rearranged boundaries, could not stifle the sentiment for unity and independence which had been aroused among the people. Bonaparte, after his exile to St. Helena, was enough of a statesman to foresee that no fiat of a world-congress would suffice to keep the various states of Italy from gravitating together. "Italy's unity of language, customs and literature," he wrote, "must sooner or later bring all her inhabitants under one government." This prediction was ultimately fulfilled, although its fulfillment was long delayed. The nationalist sentiment attained its earliest strength in the kingdom of Sardinia which, as has been said, included Piedmont and Savoy on the mainland.

THE MOVEMENT FOR ITALIAN UNITY LED BY SARDINIA.

No plan of union, however, could hope to be successful unless based upon liberalism—and there was no political liberalism in any part of Italy during the first half of the nineteenth century. Even the kingdom of Sardinia-Piedmont and Savoy was without a constitution. It was not until 1848 that its king, Charles Albert, granted his people a charter of political liberties known as the *Statuto fondamentale*. This act of liberalism enraged the Austrians and led to a war which cost Charles Albert his throne, but his son and successor refused to abrogate the constitution of 1848 although strong pressure was placed upon him to do so.[1]

THE STATUTO OF 1848.

[1] Constitutions were also granted in some of the other states, notably in the kingdom of Naples, but everywhere except in Sardinia-Piedmont they were revoked during the years following 1848

With Sardinia-Piedmont under a constitutional monarch the way was cleared for the beginnings of unity. And for the next twenty years the rise of Italy to nationhood is the story of this one state's expansion over all the rest. In its earlier stages the movement had a capable and far-sighted leader, Count Cavour, who became prime minister of Sardinia-Piedmont in 1852. He was an ardent nationalist and had in mind for Italy exactly the same goal that Bismarck sought for Germany ten years later. Like Bismarck, too, he was convinced that no scheme of Italian unity would be permitted by Austria. Austria, therefore, must first be dealt with on the battlefield and ousted from all share in Italian affairs. But Austria was a great military power in these days, and it would have been suicidal for Sardinia-Piedmont to make war on the Hapsburg empire unaided and alone.

CAVOUR'S AMBITION.

So Cavour proceeded to seek allies among the other European powers. In 1855 he joined England and France in their joint (Crimean) war against Russia—not because Sardinia had any direct interest in the question at issue, but because Cavour desired to put France under moral obligations to his own country. By this and other well-timed diplomatic manoeuvers he finally drew France into a definite agreement by which Napoleon III undertook to combine with him in driving Austria from Italian soil. Together the two allies assailed Austria in 1859, and won victories at Magenta and Solferino; but before the Austrians had been completely dislodged Napoleon III weakened and decided to conclude a peace by which only half the bargain was fulfilled. Lombardy was taken from Austria and joined with Sardinia-Piedmont, but the Austrians were permitted to keep Venetia.[1]

HIS DIPLOMACY AND WARS (1855–1859).

This démarche on the part of the French was a great disappointment to Cavour and to all the partisans of Italian unification; but it did not bring the nationalist movement to an end. On the contrary it gave new virility to the cause which now aimed at nothing short of a kingdom unified from tip to toe, with Victor Emmanuel, the king of Sardinia-Piedmont-Lombardy, as monarch of all Italy. Notable progress in this direction was made when various small states (Parma, Modena, and Tuscany) ousted their foreign rulers and declared for

[1] In return for French assistance Sardinia-Piedmont was required to hand over Nice and Savoy to France,

annexation. Under the leadership of Garibaldi both Naples and Sicily revolted in 1860, expelled the Bourbon dynasty, and voted likewise. In this way the program of unification made headway until it was virtually complete with the exception of Venetia (which Austria retained), and Rome, with the adjacent Papal States much reduced in size, which were still under the rule of the Vatican.

GARIBALDI AND THE ANNEXATIONS.

Cavour did not live to see the completion of his work, which was delayed for another decade by reason of various obstacles. Austria could not be ousted from Venetia by the armies of Italy alone; it was necessary to wait until the Austrians were in trouble elsewhere. This opportunity arrived in 1866 and the Italians seized it without hesitation. While the Prussians were overwhelming Austria at Sadowa, the Italian armies went into Venetia and "redeemed" this portion of their homeland. They would have annexed Rome and the Papal States also, had it not been for the intervention of Napoleon III who now reappeared in Italian politics, this time as the protector of the Pope's temporal rulership. From 1866 to 1870 a small French army guarded Rome against the Italians, but in the latter year it was withdrawn for service in the Franco-Prussian war and the Italians followed promptly on the heels of the evacuation. The Italian capital was thereupon transferred from Florence to Rome. The temporal power of the Papacy came to an end for more than fifty years, only to be reëstablished in a modified form by a new agreement which was concluded between the Vatican and the Italian government in 1929. Meanwhile an attempt was made to adjust the relations between the two by a Law of the Papal Guarantees which the Italian parliament enacted in 1871 but which the Papacy never recognized.[1]

THE COMPLETION OF UNITY IN 1866–1870.

The expansion of Sardinia-Piedmont into the kingdom of Italy did not involve the framing of a new constitution. The Statuto of 1848 was merely extended, stage by stage, to the annexed territories. Ostensibly this constitution still remains in effect, although it has been amended out of all recognition during recent years by the Fascist government of Italy. The process of amendment is so simple that this has not proved difficult. When the Statuto of 1848 was proclaimed it contained no provision

THE PRESENT CONSTITUTION OF ITALY.

[1] For a discussion of the Roman question, including the Law of the Guarantees and the Concordat of 1929, see *below*, pp. 723–729.

for amendment. This silence was forthwith construed to mean that it could be virtually amended at any time by merely passing an ordinary law. The leaders of the government and the courts have accepted and acted upon this understanding, namely, that the written constitution of Italy, like the unwritten constitution of Great Britain, can be changed by an act of parliament.

HOW AMENDMENTS HAVE BEEN MADE.

For more than sixty years, however, amendments were relatively infrequent despite the ease with which they could be made. Both parliamentarians and the people went on the principle that the provisions of the Statuto should not be radically changed except for some urgent reason. Accordingly there developed a general tradition that the Italian parliament would not pass any law in conflict with the constitution (and hence amending its provisions) until after the issue had been threshed out in an election campaign and virtually decided by popular vote.

The Statuto of 1848 was a very short document, and general in its terms; consequently a great deal of detail was left to be filled in by laws, decrees, and usages. With the expansion of the kingdom and the increased complexity of its government this constitution was naturally much elaborated, but its essential features underwent no great change from 1848 to 1922. It gave Italy a political system that seemed at times to be sadly lacking in executive stability, but there was no serious demand for a thorough overhauling of the fundamental law until after the close of the World War.

MUSSOLINI AND THE NEW ORDER.

On the advent to power of Benito Mussolini in 1922, however, this situation began to undergo rapid and drastic changes. The old ministerial instability disappeared. One dominant political party, the Fascist party, went into power and stayed there. Many essential features of the old constitution were cast off, one after another, until the government of Italy today bears only a faint resemblance to that of the pre-war years. The Italian political revolution of the past fifteen years has been extensive. It has retained the monarchical form of government but has transformed the basis of parliamentary representation, the system of lawmaking, the structure of local administration, the relations of church and state, the party system, and to some extent the administration of justice. The Italian government of today rests upon a new political philosophy.

ITALIAN POLITICS BEFORE THE FASCIST ERA

FASCISM THE BASIS OF THE NEW STATE.

In the case of most governments it is appropriate to describe the political framework first and the party system afterwards. This is because party organization usually adapts itself to the mechanism of government. But in the case of Italy the order has to be reversed, for there the frame of government has been adapted to the exigencies of the party system. Fascism is the pivotal fact in contemporary Italian government. It is therefore essential, before discussing monarchs, ministers, or parliaments, to explain what fascism is, how it came upon the scene, and what it has done to the Italian constitution. This, in turn, necessitates a survey of Italian political development before, during, and immediately after the great world conflict.

PARTY POLITICS AND POLITICIANS BEFORE THE WAR.

Modern Italian politics began with the Statuto, although that document contained no hint that political parties would have any share in the government. Cavour, who became prime minister in 1852, was not a strong party man. He was a liberal with conservative inclinations. During the period of his premiership (1852–1861) Cavour built up a great body of political followers. They were not held together by party ties but by personal devotion to him and by their zeal for the unification of Italy. The great statesman's death in June, 1861, shattered one of these bonds, and with the final occupation of Rome in 1870 the other went also. Thereupon the country divided into two camps commonly known as the Right (Conservatives) and the Left (Liberals). The former drew their chief strength from the north, the latter from the south. The Right managed to secure the lion's share of the credit which went with the achievement of Italian unity and for some years after 1870 was able to dominate the government. But its rule was too reactionary to suit the masses of the people and in 1876 it was replaced by the Left which was able to hold the reins of power, without interruption, for twenty years.

CRISPI AND DEPRETIS.

During this period there were several prime ministers, for both the Right and the Left proceeded to split into smaller groups, and although the groups forming the Left were consistently the stronger they could not stay united behind a single ministry for any considerable length of time. The most notable of Italy's prime ministers during the earlier portion of this period was Depretis, a shrewd political manipulator who managed to

get himself counted among the winners after each ministerial crisis. During the later years of the nineteenth century, especially during the era 1891–1896, the outstanding figure in Italian politics was Francesco Crispi, a leader of great vigor and capacity, who unhappily ran into difficulties which were not altogether of his own making. An Italian military expedition against Abyssinia met with a serious defeat in 1896 and Crispi was made the scapegoat. With his departure from office the parties of the Left surrendered, for the moment, their long lease of power.

GIOLITTI, THE OPPORTUNIST.

The Right came back to office in 1896, after its long rest in the shades of opposition, but did not remain in office very long. There seemed to be no place in Italian politics for avowedly conservative *blocchi*—as coalitions are called in the land of the Caesars. So ministries were formed, defeated, re-formed, and defeated again. This process continued in tedious reiteration year after year. Italy rivalled France in her flittings of cabinets in and out. Only one Italian statesman managed to keep himself consistently to the forefront during these troublesome times. This was Giovanni Giolitti, foremost among the leaders of the Left, an opportunist if ever there was one, and a politician of marvellous dexterity in the making of coalitions. Although it is often said that he never deigned to face any great problem in a statesmanlike way, nevertheless much of Italy's early social legislation was enacted under his leadership or with his support. At various times Giolitti had to meet not only the opposition of the conservative groups but that of the Socialists as well, for he declined to go as far as the latter desired. That he was able to do so much is a tribute to his skill in the handling of politicians. He professed democratic sentiments, but did not have any fixed political principles and was ready to favor any party provided that by so doing he could carry on a little longer. Yet he was marvellously successful in politics. Giolitti held the post of prime minister during a considerable part of the period 1900–1915, and when not in power he was usually close to the edge of it.

RISE OF THE SOCIALISTS.

Meanwhile, a Socialist party had been coming to the front as in the other countries of Continental Europe. In due course the Socialists formulated a definite program, with demands for universal suffrage, reduction of armaments, tariff reduction, welfare legislation, and social insurance. By reason of this program, together with the relative impotence of the older parties, the Socialists made steady gains during the first decade of the

twentieth century and eventually controlled a substantial group in the lower chamber of the Italian parliament.

At this juncture (1915) Italy entered the World War. The Socialists, for the most part, were opposed to this step, but the government could not withstand the allurements and compensations which were held out to Italy in the event of an Allied victory. She was to have large territorial acquisitions, chiefly at the expense of Austria-Hungary. Italy's part in the war, however, proved to be extremely burdensome to the national treasury, and the operations of the Italian army were by no means so successful as had been expected.

ITALY IN THE WAR.

During the war period the Italian Socialists gave unenthusiastic support to the government, as in other countries, and took no unfair advantage of the national emergency, although some extremists among them were believed at one time to be tampering with the morale of the army. A serious Italian reverse on the Piave was thought to have been caused by their pacifist propaganda. At any rate, when the war was over, the Socialist party emerged with a more radical program, and some of them, fired by the success of revolutions in Russia and in Germany, became avowed Communists. At the Socialist Congress of 1919 the party officially adopted a program of a communist character and declared its allegiance to the Third (Moscow) International. This program demanded abolition of the capitalistic system and called for the introduction of soviet rule. Under normal conditions a proposal so drastic would not have made a strong appeal to the Italian people, but conditions were chaotic and the non-Socialist parties were unable to offer a united opposition or to agree on a common program.

THE SOCIALISTS SWING TO THE LEFT.

The whole country, moreover, was in a disillusioned and resentful mood because Italy seemed to have profited so little from the war. The masses of the people had been led to expect large accessions of territory at the close of the conflict, and the modest awards made to Italy by the Peace Conference were a profound disappointment. There was general expectation that Italy would obtain the whole of the Dalmatian coast, together with the control of Albania, thus turning the Adriatic into an Italian lake. Many Italians also looked for the acquisition of territories in the Near East at the expense of Turkey, and in Africa at the expense of Germany. But these high hopes were not

THE NATIONAL DISILLUSIONMENT.

realized and the popular wrath recoiled on those who had taken the country into the war. To make matters worse, the government faced huge annual deficits in these immediate post-war years; the currency depreciated; the cost of living went up; and there was much unemployment.

The Socialists profited from this widespread disillusionment and discontent. They now had a group in the Chamber of Deputies large enough to force concessions from the ministry, and they used their power to the full. Strikes and disorders became more numerous and more serious; but the hand of the government seemed paralyzed. The Socialists, with their Marxist program, were not strong enough to rule Italy themselves; but they had enough power to prevent anyone else from doing it effectively. With a divided and vacillating ministry at the helm the economic situation became steadily worse during 1920. Agrarian disorders resulted from the confiscation of land by peasants in the southern part of the country. Workers began to seize factories and to organize them on the Russian plan. Soviet agents urged the movement on. For a time it looked as though Italy was on the verge of becoming a dictatorship of the proletariat; but the more moderate element in the Socialist party held back and the opportunity was lost.

THE RAPID DRIFT TOWARD CHAOS.

THE FASCIST REVOLUTION

It was not until after the danger of revolution had passed that fascism stepped into the breach. The origin of the Fascisti goes back to the early days of the war when Italy was still a neutral. At that time organizations were formed for the purpose of urging the country into the war on the side of England, France, and Russia—*fasci interventisti*, they were called. They were not anti-Socialist except insofar as they blamed the Socialists, among others, for Italy's delay in entering the World War. And when Italy joined the Allies in 1915 the reason for their existence disappeared. But they kept their association alive, and after the armistice in 1918 they were reorganized under a new name, *fasci di combattimento*, with Benito Mussolini at their head.

FASCISM COMES TO THE RESCUE.

This remarkable man was born in 1883, the son of a village blacksmith. He became a school teacher but drifted into journalism, and in 1912 became editor of *Avanti*, official organ of the Italian Socialist party. As such he was a revolutionary Socialist. After the World War broke out,

MUSSOLINI: HIS EARLY CAREER.

however, Mussolini began to advocate Italian intervention on the sides of the Allies. For this the Socialists dismissed him from his editorship. Thereupon he moved away from his old associates although not from their program. When Italy entered the war he enrolled in the ranks and served until he was wounded.

HIS ORGANIZATION OF THE BLACK SHIRTS.

After the war was over, Mussolini issued a call for ex-service men to join the Union of Combat (*fasci di combattimento*) with the idea of creating an organization strong enough to help in the solution of Italy's post-war problems. Many of them responded, and when disorder became widespread in 1920 large numbers of conservative Italians flocked into the Fascist membership also. From a revolutionary Socialist, Mussolini thus became leader of the reactionaries. Branches of the organization were established all over the country. Groups of younger Fascisti, clad in black shirts, sallied forth to stem the rising tide of communism. Meanwhile the Giolitti government sat inactive, letting the two sides fight it out in the streets, which they did with a good many casualties.

THE ULTIMATUM TO THE GOVERNMENT AND THE MARCH ON ROME.

Fascism soon got the upper hand in this guerrilla civil warfare. The split in the Socialist ranks, the weakness of the government, the desire of the people for a restoration of law and order, the financing of fascism by the large industrial corporations,—these factors contributed to its success. The organization presently evolved into a political party, the Fascist party, with a platform into which a strong dose of conservatism had been injected. Those who had joined it to put down communism now continued their support in order to see the work of reconstruction completed. Feeling himself strong enough to issue an ultimatum to the government, Mussolini in 1922 demanded that a new ministry with Fascist representation be placed in power or a general election held. While the government was trying to make up its mind, the call went forth for a Fascist march on Rome. From all corners of the kingdom, in response to Mussolini's summons, the black shirts converged upon the Eternal City and demanded that governmental authority be surrendered into their hands.

The ministry capitulated. Mussolini was installed as prime minister with a coalition cabinet of his own choosing. Then he warned the Chamber of Deputies that if it did not support the new administration it would be dissolved. The Chamber hastened to do as it was bidden.

It gave assent to the measures laid before it, notably to the electoral law of 1923. For the first time in fifty years Italy was under the rule of a prime minister who did not have to placate any element among the deputies. Then ensued a gradual revamping of the whole government. With a stern hand Mussolini proceeded to cut down governmental expenses and to balance the budget. He dismissed public officials in large numbers but replaced them, in many cases, with trusted Fascists. Nor did he scruple to crush opposition and stifle criticism wherever they showed themselves. From the outset he used the whole power of the government to curb the opposition press and to liquidate what was left of communist leadership.

MUSSOLINI BECOMES PRIME MINISTER.

Then Mussolini proceeded to secure a Chamber of Deputies that could be counted upon to give no trouble at critical moments. Under the provisions of a new electoral law (1923) it was arranged that the people should vote for parties, not for candidates. The ballots were to contain party symbols, not names, and the voters were merely to choose between these symbols. Then, when the votes in the whole kingdom were counted, the party obtaining the largest vote was to receive two thirds of all the seats in the Chamber, the successful candidates to be taken in order from a list previously prepared by the party. The minority parties were to have seats allotted to them in proportion to the number of votes polled. The idea was to make sure that some one political party would be assured of a safe majority in the Chamber, thus putting an end to bloc government and ministerial instability.

THE NEW ELECTORAL LAW (1923).

The new electoral law received its first test at a general election in 1924. The Fascist party, as was intended, stood highest at the polls and secured two thirds of the seats under this system of "unproportional representation." But the other parties, Liberals and Socialists, formed a vigorous minority, and their criticism of the government on the floor of the Chamber sometimes became more outspoken than the Fascist leaders felt inclined to tolerate. Repressive measures were used to silence them. A prominent Socialist deputy, Matteotti, was abducted and "taken for a ride" in orthodox Chicago fashion. The affair created a great commotion and the non-Fascist members of the Chamber (known as the Aventine bloc) withdrew from its sessions. But no attempt was made to coax them back; the Chamber went along with its work as a virtually undiluted Fascist body. For a time

AND THE GENERAL ELECTION OF 1924.

Mussolini took most of the ministerial posts for himself; then when his political reforms had been accomplished he distributed some of them among his chief lieutenants, retaining for himself the posts of prime minister (head of the government) and several other portfolios.

THE CORPORATIVE STATE

A CORPORATIVE STATE ESTABLISHED.

With full political power placed in their hands, the Fascists now proceeded to transform Italy into a "corporative" state. It was part of their program, adopted in 1922, that the economic organization of the country should be reconstructed. While retaining the capitalistic system and the institution of private property, this program provided for the establishment of "corporations" which would bring employers and workers together, thus manifesting the national solidarity and increasing the productive capacity of the nation. Immediately after Mussolini's advent to power, therefore, the government proceeded to break up the Italian trade unions which were under Socialist domination. In their place "syndicates" of workers were organized under Fascist leadership. Similar organizations were developed among employers and professional men. Ultimately the two were brought together, through their respective representatives, in bodies known as corporations.

THE CHARTER OF LABOR (1927).

This general arrangement was developed in detail, regularized and given a firm legal basis by the Charter of Labor (1927), a famous document of thirty articles.[1] An Italian declaration of the rights of man, it professes to be based on the principle that the government is the guardian of all economic rights, whether of employers or workers. "The Italian nation," it begins, "is an organism whose aim, whose life, and whose means of action are superior to those of the individuals who constitute it." Labor in all its forms, intellectual, technical, and manual, is declared to be "a social obligation." The right of both employers and workers to organize is recognized, but only under the control of the state and in such manner as the government prescribes. No organization of employers or workers, except it be officially recognized, is permitted to function in the interests of its members, and no organization is to be given this official recognition if it is affiliated with any international body. This rules out all communist and socialist

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organizations, and in fact gives the government power to suppress any organization which is not fascist in its sympathies.

The primary unit in the Fascist state is not the individual citizen, as in a democratic commonwealth, but a syndicate (*sindicato*) or occupational union of persons having a common economic interest. Employers who are engaged in each line of industry group themselves into a local syndicate, and workers in each branch of industry do likewise; but the syndicates of workers and employers are always separate. There are no mixed syndicates. Each syndicate is organized for all kindred industries or vocations in a given area, usually a city or district. Syndicates of employers and workers are separately grouped into federations, on a regional or provincial basis, and these again are grouped into nine great confederations, each of which covers broadly related industries. Representatives of employers and of workers come together from their respective federations in one of these corporations which are made up by combining the syndical associations or federations of a particular industry, both employers and workers, together.

THE SYNDICATES, FEDERATIONS, AND CORPORATIONS.

Syndicates of workers make contracts with syndicates of employers. These contracts regulate such matters as the hours and conditions of labor, wages, and vacations; they are binding on all employers and workers engaged in the industry, whether members of the syndicates or not. The syndicates, moreover, are given the right to exact from all employers or workers, as the case may be, an annual contribution not exceeding one day's pay roll in the case of employers and one day's pay in the case of workers. This fee is payable whether they are enrolled as members of the syndicates or not. It is collected by the government through a check-off system applied to pay rolls. Ten per cent of the total goes to support the ministry of corporations.[1] Any Italian citizen, eighteen years of age or over, if he be of good moral character and loyal to the Fascist philosophy, may join a syndicate. But his economic relations will be determined by it, whether he joins or not.

LABOR AGREEMENTS.

Labor controversies are settled, in the first instance, by conference between the officials of the syndicates concerned. Each syndicate bargains with its *vis-a-vis*, through representatives who are ostensibly of their own choosing. Failing agreement by this method the issues

[1] See *below*, p. 688.

are referred to the federation in which the industry is included. If the controversy cannot be adjusted by negotiation, it goes to a labor tribunal, of which there is one attached to each of the sixteen regular Italian courts of appeal. It is the purpose of the Charter of Labor to promote the national solidarity, prevent all interference with the normal course of production, and provide agencies for the peaceful adjustment of industrial disputes; all strikes and lockouts are therefore prohibited.

THE ADJUSTMENT OF INDUSTRIAL DISPUTES.

As for the organization of the syndicates it is required that each shall have a president and a secretary. These officers are chosen as the constitution of the syndicate may provide and are paid from the obligatory dues. But no choice of a president or secretary is valid until approved by the governmental authorities in Rome. Each syndicate also has a board of directors, but the board may be dissolved at any time by the government and its functions given to the president. Or the government may place a special commissioner in charge. As a measure of last resort the recognition given to any syndicate may be withdrawn. The same provisions apply, in a general way, to the federations and the confederations.

ORGANIZATION AND OFFICERS.

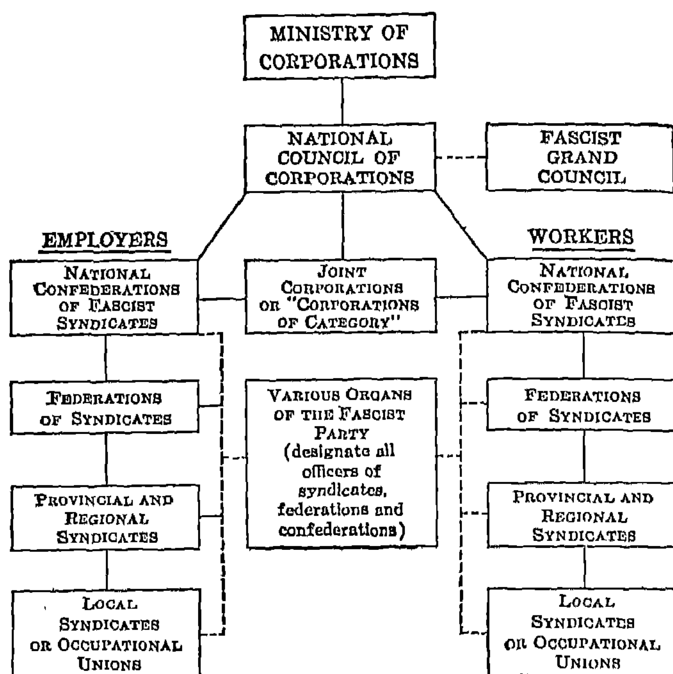
It should be repeated that employers and workers do not come together in any of the above organizations. They stay apart. They are first brought to sit together in joint corporations or "corporations of category," of which there are now twenty-two. These joint corporations (established in 1934) are composed of representative employers, workers, and technicians in such trades as cereal farming, fruit growing, forestry, fisheries, grape culture and wine making, water, gas and electricity supply, the chemical trades, paper and printing, the building trades, the metal industries, glass and pottery, arts and professions, the clothing trade, theatres and public entertainments, hotels and restaurants, sea and air transport, internal communication, and so on. The function of these joint corporations is to adjust the larger issues in dispute between employers and workers, to regulate wages, hours of labor, conditions of employment, and production costs within their respective categories, to supervise employment bureaus, to promote education, and to serve the government in an advisory capacity on all industrial questions.

THE CORPORATIONS.

THEIR FUNCTIONS.

Finally, there is the national council of corporations which is made

THE ITALIAN CORPORATIVE ORGANIZATION



up of all the members of the joint corporations, numbering more than eight hundred in all. This body now serves as the grand economic council of Italy, charged with the consideration of all important questions of economic policy. It is the general staff of the nation's productive forces. According to an announcement made by Mussolini in 1937 it will presently supplant the Chamber of Deputies. But its work is done under the inspiration of the minister of corporations and none of its decisions have any validity until he gives his approval. On important issues, where there are political implications, moreover, the Fascist grand council (a body which will be described a little later) must be consulted.

THE NATIONAL COUNCIL OF CORPORATIONS.

This elaborate series of organizations, which dominates the economic life of Italy and forms the basis of the political structure may be more clearly understood by referring to the accompanying chart:

Now although the "corporative state" is a somewhat complicated

affair on paper, it is not so intricate in practice. The syndical associations, federations, and confederations are managed by a few hand-picked officers who virtually determine their decisions. All these officers are dependable Fascists, and indeed active workers in the Fascist party cause. Employers are represented by employers, of course; but the workers are frequently represented by non-workers. In any event the Fascist party, through its officials and groups of officials, dominates the whole hierarchy of economic associations. And the Fascist government may intervene and settle controversies without reference to any of the regular organizations in case of emergency. What the whole machinery amounts to is the adjustment of industrial controversies by small groups of politicians who are supposed to represent all the interests involved but who are in fact named by the government or by the Fascist party leaders,—which is the same thing—and who think primarily in terms of politics. In other words, the plan is one of compulsory arbitration by a political party to serve its own purposes under color of promoting industrial peace.

THE THEORY AND THE FACTS.

In 1928 this elaborate syndical machinery became the basis for a new electoral law which now regulates the election of members in the Chamber of Deputies. As will be explained in the next chapter, this law provides that nominations shall be made by the various confederations and then revised by the Fascist grand council. The lists are in fact prepared by the officers of each body, who would not be officers unless they were acceptable to the government. Together the confederations send in their nominations, then the grand council revises it, but in doing so may add names that were not on any federation list. The revised list is thereupon submitted to the whole electorate at a general election for acceptance or rejection. It is a referendum, not an election. The voters merely mark a *Yes* or *No*.

THE SYNDICATES AS THE BASIS OF THE ELECTORATE.

It has sometimes been said that communism is a dictatorship of the worker while fascism is a dictatorship of the employer. But like most snappy epigrams this one is not true. Fascism does not contemplate that any class, either workers or employers, rich or poor, classes or masses, shall be permitted to rule. On the contrary its first postulate is a blunt denial that any class, group, or interest has the right to govern. The government must be supreme, not only in the political but in the economic life of the nation, and it should be so constituted as to give every class and

THE BASIC POSTULATE OF FASCISM.

every interest its fair share of representation, thus putting an end to class antagonism and substituting fair adjudication for the rule of force and violence in economic life.

THE FASCIST PHILOSOPHY

The old Italian parliamentary system, prior to 1922, was based on the glorification of the individual citizen. It made him the end in government, and looked upon the state as merely a means to this end. In the Fascist philosophy this relation between the state and its citizens is completely reversed. The state, not the individual, is the end. Democracy looks upon the state as an aggregate of living individuals; Fascism regards the state as "the recapitulating unity of an indefinite series of generations." [1] In other words the Fascists do not agree with the dictum of Tom Paine and Thomas Jefferson that a nation belongs to the people who live in it at any given moment. The living generation, according to Fascist doctrine, merely holds it as a heritage and a trust. The best interests of the state may therefore be different from those of the people who compose it at any given time. Individual citizens come into the social unity where they abide their destined hour and go their way. But the social unity endures and is always identical with itself. It guards the welfare and promotes the advantage of the individual citizen to the extent that these coincide with the interests of society and the state as a whole. Individual rights are recognized only insofar as they are implied in the rights of the state.

FASCISM VERSUS DEMOCRACY.

Thus the orientation of fascism differs from that of liberalism, utilitarianism, socialism, and communism. Liberalism regards freedom of the individual as the chief end of government. Utilitarianism seeks the highest good of the greatest number among individual citizens. Socialism exalts the right of the individual to economic justice. Communism recognizes no rights but those of the individuals who make up the proletariat. The trouble with all these cults, according to the Fascists, is that they emphasize the rights of individuals or groups of individuals. Fascism, by way of contrast to them all, does not try to solve political

FASCISM AND OTHER CULTS.

[1] A highly eulogistic exposition of Fascist philosophy may be found in Alfredo Rocco, *The Political Doctrine of Fascism*, a pamphlet issued by the Carnegie Endowment for International Peace (New York, 1926), No. 223. See also J. S. Barnes, *The Universal Aspects of Fascism* (London, 1927), and the chapter on "Fascism" in W. W. Willoughby, *The Ethical Basis of Political Authority* (New York, 1930).

or economic problems by deferring to individual rights, interests, or ambitions. Such rights, interests, and ambitions, if they exist at all, are merely means to an end.

FASCISM AND POPULAR SOVEREIGNTY.

Fascism, therefore, holds that democracy is false gospel. Here is their argument: The democratic ideal regards the government as a mere prize to be captured by some one of the contending factions among the people, and then to be used by these captors as an instrument for serving their own factional advantage at the expense of the national well-being. It places the general interest at the mercy of any group, however selfish, that happens to obtain support from a transient majority of the electorate. Democracy is a scheme of government based on organized selfishness which inevitably results in class warfare, economic disorganization, and national weakness. It begins by asserting the divinity of the vox populi, and then proceeds to identify this divine voice with the uproar and clamor which politicians and lobbyists manufacture for their own benefit. Fascism, according to its apologists, "insists that the government be entrusted to men who are capable of rising above their own private interests and of realizing the aspirations of the social collectivity, considered in its unity and in its relation to the past and the future." It rejects the doctrine of popular sovereignty for state sovereignty. For government by the whole people it substitutes government by the chosen few who are asserted to be "capable of ignoring their own private interests in favor of the higher demands of society."

THE SUPREME STATE.

Above all things, the Fascists contend that their plan of government abolishes class antagonisms, which democracy has never been able to do. Many centuries ago the state abolished personal retaliation in individual quarrels, making itself the arbiter of all such controversies but giving individuals the right to come into court with their respective claims. Fascism demands that the same be done with groups of individuals, with the classes,—in other words, that class self-defense be replaced by public adjudication. To present their respective claims effectively the classes should be organized, hence the creation of the syndicates and federations. Having been thus organized, and provided with a process of adjudication, all groups among the people are forbidden to take the law into their own hands, just as individual citizens have been. They must refer their controversies to the established authorities for settlement—that is, to the corporations and the courts.

There is a good deal to be said for this philosophy if one could believe it sincere, and if it were being exemplified in practice by the present Italian government. The Charter of Labor has a truly utopian ring, but its actual result has been to strengthen enormously the hold which the Fascist party leaders maintain on the life of the nation. Industrial peace is greatly to be desired, but may not the extinction of free government be too high a price to pay for it? And the weakest link in the whole claim of Fascist argument is the lack of any standard whereby to measure and interpret the interests of the nation as a whole. This being the case it seems inevitable that the party in power, whatever it may be, will go on maintaining itself by force, yet with a sincere belief that its own perpetuation in office is absolutely essential to the national well-being.

THE WEAK POINT IN IT ALL.

At any rate the Fascists have a great admiration for Machiavelli, and justifiably so because this Italian political philosopher regarded the strength and security of government as the chief end of man. "Let a ruler, therefore, do whatever he can to preserve his own life, and perpetuate his own supremacy; the means which he uses shall be thought honorable, and be commended by everybody; because the people are always taken by the appearance and event of things, and the greatest part of the world consists of the people; those few who are wise taking hold when the multitude has nothing else to rely upon." [1]

PRE-WAR ITALIAN GOVERNMENT. For the political history of Italy before the World War, reference may be made to Bolton King, *History of Italian Unity, 1814–1871* (2 vols., London, 1899), W. R. Thayer, *The Dawn of Italian Independence* (2 vols., New York, 1893) and his *Life and Times of Cavour* (2 vols., Boston, 1911), J. A. R. Marriott, *Makers of Modern Italy: Napoleon to Mussolini* (new edition, New York, 1931), Pietro Orsi, *Cavour and the Making of Modern Italy, 1810–1861* (London, 1914), Bolton King and T. Okey, *Italy Today* (London, 1911), W. K. Wallace, *Greater Italy* (New York, 1917), A. Solmi, *The Making of Modern Italy* (New York, 1925), Benadetto Croce, *Italy from 1871 to 1915* (London, 1929), G. M. Underwood, *United Italy* (London, 1912), and G. M. Trevelyan, *A Short History of the Italian People* (London, 1920). A full bibliography may be found in the *Cambridge Modern History*, Vol. XI, pp. 908–913.

FASCISM AND THE CORPORATIVE STATE. On the Fascist revolution and the Fascist philosophy a large number of publications have appeared during the past ten years. General surveys are given in H. R. Spencer, *Government and*

[1] Niccolò Machiavelli, *The Prince*, chap. xviii.

Politics of Italy (New York, 1932), and R. L. Buell, editor, *Governments in Europe* (revised and enlarged edition, New York, 1937), pp. 36–140. Among books in English which will be found useful by the general reader are H. W. Schneider, *The Fascist Government of Italy* (New York, 1936), J S. Barnes, *The Universal Aspects of Fascism* (London, 1927), Herman Finer, *Mussolini's Italy* (New York, 1935), Paul Einzig, *The Economic Foundations of Fascism* (London, 1933), William Elwin, *Fascism at Work* (London, 1934), Mario Missiroli, *What Italy Owes to Mussolini* (Rome, 1937), Fausto Pitigliani, *The Italian Corporative State* (London, 1933), Alexander Robertson, *Mussolini and the New Italy* (New York, 1928), E. W. Hullinger, *The New Fascist State* (London, 1928), and Gaetano Salvemini, *Under the Axe of Fascism* (New York, 1936) which is a highly critical discussion. A volume by H. Arthur Steiner on *Government in Fascist Italy* (New York, 1937), should also be mentioned.

Special attention should also be called to three books by Mussolini himself, namely, *The Doctrine of Fascism* (Rome, 1935), *The Corporate State* (Florence, 1936), and his *Autobiography*, of which several editions have been published since it appeared in 1928.

CHAPTER XXXVIII

ITALIAN GOVERNMENT TODAY

L'Italia è fatta, ora bisogna fare gli Italiani.—*Massimo d'Azeglio.*

Italy remains a limited monarchy, with succession to the throne vested in the House of Savoy. This succession is regulated in accordance with the mediaeval rule known as the Salic Law, by which none but male heirs to the throne are recognized. In case of any controversy relating to the succession, the advice of the Fascist grand council, the supreme organ of the Fascist party, must be sought. The present Italian monarch is Victor Emmanuel III, the great-grandson of Charles Albert who granted the Statuto in 1848. He has been on the throne since 1900. The chief executive power belongs to the crown, acting on the advice of the prime minister, a post occupied by Signor Mussolini since 1922. The king is titular commander-in-chief of the armed forces; all appointments to civil office are made in his name; and his person, according to the constitution, is "sacred and inviolable."

THE CROWN.

Under the constitution of 1848 provision was made for a council of ministers, appointed by the king, and every royal order had to be countersigned by one of these ministers before it became valid. There was a prime minister, or president of the council; but he held no position of supremacy over the other ministers. As in France he was merely the chief in a group of colleagues. Sometimes, indeed, the prime minister was outranked in influence by individual members of his cabinet and was dependent upon them for his continuance in office. The old ministries had from twelve to fifteen members, each serving as the head of a department. They went out of office on an adverse vote in the Chamber of Deputies.

THE OLD MINISTERIAL RESPONSIBILITY.

In 1925 this arrangement was supplanted by a new one.[1] The prime minister was exalted above the other ministers and given the

[1] Law of December 24, 1925. An English translation is printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part III, pp. 11–13.

title "head of the government" (*Capo del Governo*). The new provision stipulates that the head of the government is appointed by the king and responsible to him for the general policy of the government. He chooses the other ministers, assigns their functions, directs their work, and "coördinates their activities." The special nature of his position is indicated by a clause which provides heavy penalties for any attempted assault upon the head of the government, this being a provision which in other monarchical countries is applied only to members of the royal house.

THE NEW "HEAD OF THE GOVERNMENT."

THE MINISTRY

Under the old constitution, as has been explained, the prime minister was responsible to the Italian parliament. According to the amendment of 1925 the head of the government is responsible only to the king. And in any event responsibility to parliament would mean little or nothing under present conditions, because the constitution now provides that no question can be placed on the calendar of either the Senate or the Chamber save by permission from the head of the government. That provision, of itself, precludes the discussion of any matter on which an adverse vote might be forthcoming. To make assurance doubly sure it is further stipulated that if either chamber rejects a measure the head of the government may require it to be reconsidered at the expiration of three months, in which case it must be voted on without discussion and by secret ballot. And if one of the chambers defeats a bill, the head of the government may nevertheless require that it be submitted to the other chamber and voted upon there. Finally, laws can be promulgated as decrees, if need be, and do not need the approval of parliament.

HIS RESPONSIBILITY AND POWERS.

The Italian ministry now contains fourteen posts, but not fourteen members. For in addition to being prime minister and head of the government, Mussolini is also minister of the interior, of war, of the navy, and of aviation. Other departments are headed by ministers of foreign affairs, finance, education, agriculture, justice, colonies, communications propaganda, public works, and corporations. Besides holding several portfolios the head of the government has ensured himself a dominating influence in the council of ministers by insisting on the principle of rotation. In other words he has rarely allowed a minister to remain

THE MINISTRY.

very long as the head of any department but has shifted his ministers at frequent intervals. By this means he has accomplished two purposes. First, he has been able to give the versatility and resourcefulness of his lieutenants a thorough try-out, and, second, he has prevented any possible rival from gaining the popularity and prestige which might result from long and successful tenure of a high ministerial post. Each ministerial department is provided with one or more undersecretaries or assistant ministers, and it is with the aid of these that the prime minister manages to serve as head of several departments at the same time. Both ministers and undersecretaries are transferred or dismissed whenever the prime minister so recommends, and he need give no reasons for his recommendations.

THE INDEPENDENT AGENCIES.

In addition to the fourteen regular ministerial departments there are various independent administrative agencies of the Italian government. One of these is the council of state, which has five sections. Three of these sections serve as advisory boards to the ministry, while the other two form a high court for the adjudication of controversies in the field of administrative law.[1] In Italy the attorney-general, who serves as legal adviser of the government, is not a member of the ministry. His office is a separate administrative agency. So is the court of accounts, which is not a court at all, but an auditor-general's office. In addition, however, it performs the function of registering royal decrees. There are various other separate administrative agencies of the Italian national government, but these are the more important ones.

THE CIVIL SERVICE.

The routine work of administration, under the general direction of the ministers, is performed by a large staff of bureau chiefs and other subordinate officials and employees who constitute the Italian civil service.[2] They are of all gradations and for nearly fifty years admission to this service, except in the highest posts, has been on a competitive basis, although political influence has never been entirely eliminated as a factor in selection. Promotions have also been made on the basis of merit and seniority. The Fascist revolution has not changed this system except to provide that all officials and employees must be persons of "good civil, moral and political conduct,"—the last of these three requirements making

[1] See *below*, pp. 711–712.

[2] See the chapter on "The Italian Civil Service" by Aldo Lusignoli, in Leonard D. White, editor, *The Civil Service in the Modern State* (Chicago, 1930), pp. 301–339.

it essential that they be Fascists in good standing. In accordance with this stipulation there has been a general ousting of all non-Fascists from the public service.

THE FASCIST GRAND COUNCIL

Mention has been made of the Fascist grand council which has now been elevated into a regular organ of Italian government and possesses more power than any other body. The head of the government is president of this council. Membership is of three categories: a few life members, certain members ex officio, and a larger number of members who are appointed for "an unlimited period of time." The ex officio members include such functionaries as the ministers, the presidents of the Senate and the Chamber, the president of the Italian Academy, the presidents of the various confederations, and the higher officials of the Fascist party, all of whom remain members for the duration of their respective offices. The appointive members are named by the head of the government for a three-year term and are reëligible. They must be persons who have rendered special service "to the nation or to the Fascist revolution."

COMPOSITION OF THE COUNCIL.

The Fascist grand council has three functions, one of which is connected with the organization and work of the Fascist party as such, while the other two have to do with the nomination of deputies. In the first place the council names the chief officials of the party. These consist of a secretary-general (who serves also as secretary of the council) and a national directory of nine other members. This national directory is the executive organ of the party. Second, the council receives the lists of nominations for membership in the Chamber of Deputies, as submitted by the various confederations of employers' and workers' syndicates, and selects from these lists the candidates whose names are submitted to the voters for approval.[1] Third, the council serves as an advisory body to the crown and to the head of the government. It presents to the king nominations for membership in the ministry. It is consulted on all questions relating to changes in the constitution, in the succession to the throne, in the structure of the government, in the organization of the confederations and syndicates, and in the relations between church and state.

ITS FUNCTIONS.

This combination of partisan and official functions may seem in-

[1] See *below*, pp. 702–703.

congruous, but it is quite in keeping with the totalitarian principle on which the present Italian government rests. The Anglo-Saxon idea that the best way to keep the government responsible is to build up a vigorous opposition party,—that idea has no place in the Italian political philosophy of today. On the contrary the Fascist reconstruction has proceeded on the principle that one political party should take all the power and assume all the responsibility. This party organization is injected into the structure of government. Government and party are identified.[1] In Great Britain and in America, on the other hand, the political parties have no constitutional basis. They are not clothed with any official status.

AN OFFICIAL POLITICAL PARTY.

THE ITALIAN PARLIAMENT

The Italian parliament still consists of two branches,—the Senate and the Chamber of Deputies, although Mussolini announced in 1937 that the Chamber of Deputies would presently be abolished and its place taken by the national council of corporations. The Senate, as established by the constitution of 1848, was made up of a few hereditary members (princes of the Italian royal house) but mainly of senators appointed by the crown. These appointive senators were selected from various categories of citizens,—for example, the higher dignitaries of the church, persons who had held important offices in the government or high rank in the army or navy, members of the Royal Academies, and others who by their service or eminent merit had done honor to their country. All were named for life terms.

THE ITALIAN PARLIAMENT:

1. THE SENATE.

Relatively little change has been made in the organization of the Senate as a result of the Fascist revolution. In 1925 an amending law provided that governors of Italian colonies should be included within the categories of persons eligible for appointment. Otherwise the rules of eligibility remain as before. Appointments are made by the crown on recommendation from the head of the government. The present membership is over 400, and a considerable majority of these are senators who have re-

A SLIGHT CHANGE IN 1925.

[1] According to its own constitution the Fascist party is designated as "a civil militia" in the service of the Fascist state. This constitution is printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part III, pp. 17–31.

ceived their appointments since Mussolini came to power. It is therefore safely pro-Fascist. Those senators who are not in sympathy with the government stay away from the sessions.

ITS POWERS.

Ostensibly the Italian Senate has always had equal legislative power with the Chamber of Deputies, except for the customary provision that money bills must originate in the Chamber. But in actuality its powers have been far from co-equal. Before the Fascist revolution the Senate had become a secondary chamber in every sense of the word. Ministries did not resign on an adverse senatorial vote; most measures of all kinds originated in the Chamber, and although the Senate sometimes amended these bills it almost invariably gave way when the Chamber insisted. Although the Senate contained, as it does today, a fine array of brains, it did not assume an important share in the moulding of public policy during the years which preceded the advent of Mussolini to power.

ITS GAIN IN PRESTIGE.

During the past fifteen years, however, the Italian Senate has gained somewhat in prestige. This is not because its powers have been increased but because the authority and influence of the Chamber have been diminished. The Senate has gained some effulgence through the complete eclipse of the lower Chamber. In the old days when the Chamber of Deputies rejected a bill, the Senate never got a chance to debate it at all. But it is now provided that, if the Chamber rejects a measure, the head of the government may nevertheless require it to be sent to the Senate and voted upon there. And if the vote is favorable he may then transmit it to the Chamber for reconsideration without debate and for decision by secret ballot.

LIMITATIONS ON BUSINESS AND DEBATE.

So long as the present régime continues it is profitless to discuss the relative importance of the two chambers which make up the Italian parliament. The head of the government controls them both. There is no serious opposition to him in either. All important issues of national policy are discussed by the Fascist grand council and decided by it before they get to either house of parliament. In the British House of Commons there is a rule that no proposal to spend money can be considered unless it has been recommended by the ministry in the name of the crown. In the Italian parliament the principle of executive sponsorship is carried much farther, the rule being that "no subject can be placed on the orders of the day in either chamber without the approval of the head of the government." All measures which come

before the Italian parliament are in effect "government measures," for without ministerial approval no bill gets on the calendar at all.

The Chamber of Deputies has undergone a general overhauling, alike in its organization, powers, and procedure during the past fifteen years. Prior to the World War it was a body of more than 500 members, each of whom was chosen from a single-member district for a maximum term of five years. The suffrage included virtually all male Italian citizens twenty-one years of age or over, and the voting was by secret ballot. In general the plan was much like that which is used in electing members of the French Chamber today. If no candidate received a majority at the first election, a second polling was held a week later. Both elections were held on Sunday.

2. THE CHAMBER OF DEPUTIES: ITS EARLIER BASIS.

This electoral system resulted in the submerging of national issues by purely local and personal ones. Small districts elected small men. The voter's horizon was narrow and that of the deputy conformed to it. Elections turned on personalities rather than on programs and the deputy went to Rome with far more interest in getting favors for his own district than in promoting the national well-being. Party organization became chaotic and party discipline a myth; it was a case of every deputy for himself, with groups and blocs forming and dissolving at frequent intervals.

THE DISSATISFACTION WITH IT

In an attempt to improve this situation the electoral system was changed in 1919 to provide for larger districts, each electing several deputies according to the principles of proportional representation. The change seemed to promise an improvement, but before the merits of the plan could be fully determined the Fascists obtained control of the government and replaced it (1923) by a scheme of their own. In the belief that many of Italy's political difficulties had resulted from the multiplicity of parties, and that proportional representation would merely accentuate this party demoralization, the Fascists decided to set up a plan of "unproportional representation," as has been already mentioned.

THE CHANGES OF 1919 AND 1923.

This scheme of unproportional representation was unique, and although it has now been abandoned it deserves a word of description as one of the many bizarre experiments in the art of government which European countries have tried since the close of the war. The law of 1923, as has been said, provided that the entire kingdom

should constitute a single electoral district. Each political party, on the eve of an election, was to nominate its list of candidates for the country as a whole. These names were then to be published for the information of the voters but were not to be placed on the ballots. Instead, the ballots would contain only the symbols of the various parties, for example, the Fascist symbol (the Roman fasces and axe), and the symbol of the Popolari party which was a cross on a shield. The voter was to mark his ballot by drawing a line through the symbol of the party for which he desired to have his vote recorded.

THE SCHEME OF "UNPROPORTIONAL REPRESENTATION."

The most striking feature of this scheme, however, was the unproportional method of counting the ballots. The law provided that the party receiving the largest number of votes in the country as a whole, even though falling short of a majority, should be awarded at least two thirds of the seats in the Chamber of Deputies, the names of the elected candidates being taken serially from the top of the party's national list. The other parties were to take the remaining seats in proportion to the number of votes cast for each of them At the election of 1924 the Fascist list obtained about forty per cent of the total vote and was given 356 seats out of about 500, thus ensuring the party a safe and unified majority in the Chamber.

HOW IT WORKED.

The purpose of this plan was to put an end to the practice of government by blocs and coalitions. It aimed to provide a guarantee that, howsoever an election might turn out, some one political party would obtain a clear majority in the Chamber. And this party's control would then be so secure that there could be no more shuffling of responsibility, no more nonfulfillment of party pledges, and no more stalling of the governmental machinery. In a general way the plan achieved its purpose. It gave the Fascists control of the Chamber although they did not gain a majority at the polls.

ITS PURPOSE.

But the system of unproportional representation was highly unpopular with the non-Fascist elements among the people. To them it was merely a nation-wide gerrymander. They saw no good reason why forty per cent of the voters should elect more than sixty-six per cent of the deputies. Nor was the plan altogether satisfactory to Mussolini and his supporters. It gave them an ample majority in the Chamber, but it also brought into that body a sullen and irreconcilable minority, armed with real

ITS UNPOPULARITY.

grievances and determined to provide the ministry with every ounce of trouble that they could manufacture. Then, when these minority members found their obstruction overborne by ministerial repression, most of them withdrew from the sessions altogether.

THE NEW ELECTORAL LAW OF 1928.

The Fascist leaders thereupon decided that not merely a two thirds majority but complete unanimity was what Italy needed in her Chamber of Deputies. They were also of the belief that the nomination and election of deputies should be linked with the hierarchy of syndicates and confederations which had now been set up, thus giving adequate representation to the organized productive forces of the nation. Accordingly, in 1928, the electoral procedure was once more transformed. Under this latest plan the membership of the Chamber has been reduced to 400. When the time for an election arrives each of the national confederations prepares a list of candidates, its quota being fixed by law. Thus one national confederation is entitled to name twelve per cent of the candidates, another national confederation ten per cent, and so on. Eight hundred names are proposed in this way. But only the high officers of the confederations (and they are government appointees) take any part in this process of selecting candidates. They are convoked in Rome for the purpose. In addition various cultural and educational associations are entitled to propose additional candidates.

THE LISTS OF CANDIDATES.

REVISION OF THE LISTS BY THE FASCIST GRAND COUNCIL.

These names go to the secretary of the Fascist grand council who arranges them in alphabetical order and submits them to the whole council for revision. The council may strike out any names on the list or may insert new names. In this revision the list of about 1,000 names is cut down to 400; it is then published in the *Official Gazette* and posted on billboards throughout the country under the direction of the minister of the interior. As the original list is not made public it is impossible to tell how many names have been inserted by the grand council on its own initiative.

THE ELECTION.

The election takes place on the third Sunday after the official publication of the revised list of candidates. The voters do not mark their ballots for candidates. They merely vote *Yes* or *No* on the question "Do you approve the list of deputies nominated by the Fascist grand council?" If the affirmative votes constitute a majority the whole 400 deputies are

elected and take their seats. They sit for Italy at large, not for any part of it. Ostensibly they are the choice of the whole electorate. Their responsibility is to the entire kingdom, not to some small district or constituency.

A SECOND ELECTION WHEN NECESSARY.

But what if a majority at the polls should give its decision in the negative? In that case the electoral law provides for a second election which must be held within a stated time. This second polling differs from the first in that nominations may be made by any association or organization which has a membership of at least 5,000 registered voters; but this freedom can never mean much because no associations are permitted to be organized without the government's consent. At this second election, as at the first, the voter marks his ballot for an entire list of candidates, not for individuals. And the list which obtains the largest number of votes is entitled to take three fourths of the seats while the remainder are distributed in proportion to the number of votes which each minority list has obtained. The names are taken in order from the head of each list as officially announced before the election.

MAKE-UP OF THE PRESENT CHAMBER.

Two elections have been held under this new plan,—in 1929 and 1934. On both occasions the list approved by the Fascist grand council was endorsed at the polls by an overwhelming vote.[1] It could hardly have been otherwise, for the ballots are printed on transparent paper and the Fascist militia, who guard the polls, can see how each person votes. The new Chamber of Deputies, elected in this way, is a very diversified body, including within its membership representatives of every important economic, social, and cultural element in the country,—but having no party divisions within its fold. Every one of its 400 members is a loyal Fascist. In its composition, therefore, the present Italian Chamber is unique. In most countries the legislature is politically diversified but its members are drawn from a relatively narrow economic and social range. Lawyers, as a rule, form the largest single element, with business men, journalists, landowners, and professional politicians taking most of the remaining seats. This is true of Congress, the House of Commons, and the French Chamber of Deputies. But in the Italian Chamber, by way of contrast, the economic and social

[1] At the election of 1929 the Fascist list obtained over 98% of the total, and at the election of 1934 the figure was 99.8%. The opposition at this latter election mustered about 15,000 votes out of a total which exceeded 10,000,000.

diversification is such that it leaves no class without its quota of representatives.[1]

Thus is carried into operation the Fascist doctrine that, since the chief task of a government is to promote the economic and cultural interests of the kingdom, it should provide representation for all the productive and intellectual forces of the nation rather than for mere differences of political opinion as represented by squabbling groups which call themselves parties. The Fascist philosophy assumes that the individual citizen's point of view on nearly all questions of public policy is determined by his economic and social station in life. This is because the issues have now become economic rather than political. They are mainly concerned with such matters as public finance and taxation, the relations of employer and worker, social insurance, trade and tariffs, and the promotion of industrial prosperity. Such problems, it is believed, should be settled by discussion among representatives of the interests directly affected; they should not be turned over for settlement to groups of professional politicians who regard them as mere pawns on the chessboard in the play of partisan rivalries. To this end the Italian parliament is being transformed from a political legislature into a great economic council based upon the principle of vocational representation.

WHAT THE CHAMBER IS SUPPOSED TO REPRESENT.

But while the old Chamber of Deputies has been retained during the first fifteen years of the Fascist reconstruction, its powers and influence have become steadily smaller. They are now at the vanishing point. This is because the executive authorities have greatly extended the practice of law-making by decrees. Legislation by decrees or ordinances is, of course, not a Fascist innovation. The constitution of 1848 empowered the crown to issue "necessary decrees and regulations for the execution of the laws, without, however, suspending their observance or granting exemption from them." Under this provision large numbers of royal decrees were framed and promulgated by the ministers every year. But the limitations were strict. The decrees had to keep within the bounds of statutes passed by parliament and they had to be countersigned by a minister who was responsible to parliament.

LEGISLATION BY DECREE.

Since 1926, however, a new arrangement has been in effect. By

[1] A table showing the occupational distribution of the Chamber's membership is printed in H. W. Schneider, *The Fascist Government of Italy* (New York, 1936), pp. 56–57.

the provisions of a general law which was enacted in that year the power of the government to issue decrees was greatly extended.[1] Decrees may now be promulgated with the full force of law if they have as their purpose (a) the execution of the laws, or (b) the use of powers belonging to the executive branch of the government, or (c) the organization and functioning of the state administration. In addition the government is now empowered to issue regulations having the force of law "whenever the case is exceptional by reason of its urgency or absolute necessity." Such regulations, however, must be submitted to parliament for ratification at not later than the third session after they have been promulgated.

ITS INCREASE DURING THE PAST FEW YEARS.

Decrees are issued in the name of the crown and must have the countersignature of a minister, but the minister is not responsible to parliament. He is accountable only to the head of the government, who in turn is responsible to the king. Much important legislation has been put into effect during recent years without discussion in parliament at all. Ostensibly the Italian parliament can repeal or amend the provisions of any decree by enacting a new statute; but no proposal for such repeal or amendment can obtain a place on the calendar of either chamber without permission from the head of the government. As a practical matter, therefore, the decree-making power of the executive is virtually final and extends over the whole area of legislation. It is not even limited by the provisions of the constitution.

ITS ABSOLUTE CHARACTER.

The apologists for this arrangement argue that it gives flexibility to the methods of lawmaking. It enables the country to have its laws made and changed promptly, without interminable debates and endless compromises. It embodies a plan of lawmaking by experts, who know what is needed and can adapt the provisions of their decrees to the actual requirements of the public well-being. But the dangers inherent in this expanded practice of legislation by decree are obviously great. The English House of Commons fought and won its battle with the Stuart kings on this very issue. Executive legislation has its merits, but it is capable of serious abuse unless the executive branch of the government is directly responsible to the

HOW THE FASCIST LEADERS DEFEND THIS EXTENSION.

[1] The law of January 31, 1926 An English translation is printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part III, pp. 14–16.

representatives of the people, which is not now the case in Italy.

In connection with the reorganization of the Italian government there has been no extension of the suffrage, and women have not yet been given the right to vote. The suffrage, at the present time, is granted to all male Italian citizens, twenty-one years of age or over (or eighteen years of age or over if married or widowers with children) provided they satisfy one of the following four conditions: (a) are contributing members in any of the various syndicates, or (b) pay taxes, either national or local, amounting to at least one hundred lire ($5.00) per annum, or have an annual income of five hundred lire from government bonds, or (c) are employees or pensioners of the national or local governments or of any public institution, or (d) are clergymen of any religious body recognized by law. This means virtually full manhood suffrage. The number of adult male citizens who cannot qualify under some one of the above-mentioned conditions is very small.

THE EXISTING SUFFRAGE.

There was a woman suffrage movement in Italy during the years immediately following the war, and it was looked upon with favor by the Socialist party; but during the past decade it has been submerged by the fascistization of Italian political thought. Women employers and workers are admitted to membership in the syndicates and on one occasion Mussolini virtually promised that the national suffrage would be extended to include them;[1] but nothing in that direction has yet been done. In 1925 women were given the right to vote at municipal elections, but since such elections have been abolished this privilege no longer exists.

NO WOMAN SUFFRAGE IN ITALY.

LOCAL GOVERNMENT

For purposes of local government Italy is divided into 92 provinces, corresponding somewhat to the French departments.[2] Like the latter they vary in size and population. Each province has as its chief executive officer a prefect whose functions are in general like those of the official

ITALIAN LOCAL GOVERNMENT:

[1] In his Padua speech of June 2, 1923, printed in *Mussolini as Revealed in His Political Speeches*, edited by Bernardo Quaranta di San Severino (London, 1923), p. 286.

[2] Prior to 1927 there were 75; in that year new provinces were established, mainly in territory which had been acquired as a result of the war.

who bears a similar title in France. These prefects are appointed by the crown on recommendation of the minister of the interior through the head of the government. At the present time Mussolini occupies both these positions. The prefect is not only the chief official of his province but serves as the provincial agent of the national administration. In all matters he is subject to its authority and supervision. He is assisted by a deputy-prefect and one or two provincial inspectors, who are also appointed from Rome. In case the prefect is incapacitated or absent, the deputy-prefect takes his place. There is also a secretary of each prefecture and a varying number of provincial employees.

THE PROVINCES AND THEIR PREFECTS.

Each province also had its provincial council until 1927, the members being elected by the people for a four-year term. But by the Fascist reconstruction of local government which took place in that year all provincial elections were indefinitely suspended. In place of the council each province was endowed with a *giunta* or appointive board, the members of which are appointed by the central authorities at Rome. This board has various functions in connection with the administration of the province and also with respect to the supervision of government in the communes. Since 1931, moreover, there has been in each province a provincial council of corporative economy with the duty of coördinating the productive activities of the province. But these bodies have not yet become active agencies of systematic regulation. So virtually all power in the Italian province is lodged with the prefect who is not responsible to any local authority but only to the minister of the interior in Rome.

THE PROVINCIAL BOARDS.

Within the provinces are the communes, more than 7,000 of them. In Italy, as in France, there is no legal differentiation between city, town, and village; all are rated as communes. Prior to 1926 each commune had an elective municipal council and a sindaco or mayor who was chosen by the council from among its own members. But in that year both the councils and mayors were abolished in all communes of less than 5,000 population, and by subsequent decrees the same action was taken as respects the larger communes.

THE COMMUNES.

The chief executive officer of the commune, under the new centralization, is an official known as the podestà.[1] The title harks back

[1] The accent is on the last syllable.

to the cities of mediaeval Italy. The podestà is appointed by the minister of the interior (usually on recommendation of the prefect); his term of office is five years and he is eligible for reappointment. But he may be removed at any time. To be eligible for appointment as a podestà one must possess certain educational qualifications which are laid down by law, or a designated amount of experience in municipal administration. Citizens who served in the zone of operations during the World War with the rank of officer or non-commissioned officer, are exempted from these requirements.

THE PODESTÀ

The podestà, under the new law, has acquired all the powers formerly vested in the sindaco and the municipal council. He has become the focus of all municipal authority. He promulgates the laws and decrees which are sent to him from Rome through the prefect of the province; he is responsible for the maintenance of public order and security in his commune; he prepares the local budget and virtually fixes the municipal tax rate. As respects local matters he may issue decrees on his own initiative. In the larger communes the minister of the interior may appoint a deputy-podestà, and in cities of over 100,000 population he may appoint two of them. They assist the podestà by doing such work as he may assign to them and serve in his place during his absence or incapacity. The podestàs receive no salary, but they may be given allowances for expenses which sometimes amount to more than what the sindacos were paid. They need not be chosen from the communities which they are set to rule and in fact are often sent in from outside.

HIS POWERS.

The elective municipal councils were abolished in 1927 and provision was made for the establishment of advisory councils in their place. These councils, which vary in size from ten to forty members, are obligatory in communes of more than 5,000 population but optional in the smaller ones. The councillors are appointed by the prefect except in cities of over 100,000 population. In these they are named by the minister of the interior. But in either case the appointments are made from lists of names submitted by the local syndicates. The functions of the councils are altogether advisory. They have no final powers of any kind but must be consulted on the local budget and on tax matters.

THE ADVISORY COUNCILS.

From all this it must not be assumed that the podestà is a local

dictator. He is not accountable to the people of his commune, to be sure; but supervision over all his actions by the higher authorities is strict and continuous. A memorandum setting forth all actions taken by the podestà must be transmitted daily to the prefect of his province, and the prefect may overrule any such action within fifteen days. The budget of the commune must also go to the prefect who has thirty days in which to approve or disapprove it. If the prefect has any doubt he sends one of his provincial inspectors to the commune to investigate. And if he finds that the local authorities are incompetent or negligent in the matter of any local service, he may send experts (at the expense of the commune) to effect the necessary improvements.

CENTRAL SUPERVISION.

In the case of proposals to borrow money on the credit of the commune, and in certain other matters the consent of the provincial *giunta* must be obtained. This board has also been given a variety of supervisory powers with respect to the acquisition or sale of lands by the communes and economic activities in general. When controversies arise between podestà and prefect, or between the local and the provincial authorities with respect to their rights and jurisdiction, the minister of the interior has power to intervene and decide.

Rome, the Italian capital, has been under a special dispensation since 1925. Its mayor and elective council were then abolished and replaced by an appointive municipal organization which consists of a governor, two deputy governors, and ten "rectors." All are named by the crown on the advice of the minister of the interior. The governor is the podestà of Rome, assisted by his two deputies. The rectors serve as the heads of the various municipal departments and services. They do not form a board but serve as individual administrators under the governor's direction. There is also an advisory council of eighty members who are appointed from lists prepared by the various syndicates and associations.

THE GOVERNMENT OF ROME.

The existing plan of local government in Italy thus embodies the principle of centralization raised to the highest pitch. Podestàs, prefects, and the minister form the three rungs of the ladder of rigid central control. Through his prefects and his podestàs the minister has a direct channel of authority over every official of local government from one end of the kingdom to the other. This provides one reason why Mussolini has chosen to retain the post of minister of the interior for

THE HIGH DEGREE OF CENTRALIZATION.

himself. The extinction of local self-government (as Americans understand the term) is virtually complete. The people elect nobody in any branch of local administration.

THE ITALIAN COURTS

Changes of great importance have also been made in the Italian judicial system during the past fifteen years, and here again the trend has been strongly toward centralization. In their early development the Italian legal and judicial systems owed a great deal to France. After the unification of the kingdom the Italian government followed the Napoleonic example and gave the kingdom a series of codes. These embodied the civil law, the criminal law, the procedure in both fields, the laws relating to commerce, and so on. The Italian codes still follow the principles of the old Roman jurisprudence and in general bear a resemblance to the codifications which were framed in France under the auspices of the first Bonaparte.

THE LEGAL SYSTEM.

Prior to 1923 there were five courts of cassation in Italy, with no supreme court for the whole kingdom. This proved an obstacle to the uniform interpretation of the law as set forth in the codes. One interpretation would hold in the north of Italy, another in the south. But the five courts of cassation have now been unified into one tribunal, with its seat at Rome. Today there is uniformity in the interpretation of the laws and decrees. This does not imply, however, that a decision, when once given by an Italian court, must stand as a judgment to be followed. The Anglo-American legal doctrine of *stare decisis* has no place in Italian jurisprudence. Every decision, even in the court of cassation, stands on its own feet. The court may reverse its rulings, and does so frequently. This practice has some merits in keeping the interpretation of the law abreast of current needs, but it puts an element of uncertainty into the administration of justice.

INTEGRATION OF THE LAW.

The judges in all the regular courts are appointed by royal decree, on recommendation of the minister of justice; but they must be persons who possess certain qualifications in the way of legal training and experience laid down by law. As in France, they are usually chosen from those who have prepared themselves for a career on the bench, and not from among lawyers engaged in the active practice of law, as is the American custom. Judges of the higher Italian courts are ordinarily appointed by

HOW JUDGES ARE NAMED.

promotion from the lower ones. No Italian judge may be removed from office after three years of service except with the consent of the superior magisterial council, which is a body made up of high judicial officers with the president of the court of cassation as chairman; but in 1925 a general dismissal or demotion of anti-Fascist judges proved to be possible when the government demanded it. The superior magisterial council also prepares and keeps up to date a schedule showing the qualifications and experience of all the judges and public prosecutors. This schedule is followed by the minister of justice in making promotions.

PROMOTIONS AND TENURE.

The lower courts of Italy are organized on a district basis. The whole kingdom is divided into primary judicial areas, each having its own local court with a magistrate or praetor at its head. These courts have a limited jurisdiction in both civil and criminal cases. Above them are superior courts, more than a hundred in number, which hear appeals from the lower courts and have original jurisdiction in more important civil controversies. For serious criminal cases there are courts of assize which sit with a jury. Mention should also be made of the "special courts for the defense of the state" which have been set up to try persons accused of offenses against the Fascist régime, such as the organization of unauthorized political associations. These courts, made up of officials, do not afford accused persons the protection of a jury trial.

THE GRADATION OF COURTS:

1. DISTRICT COURTS.

2. SUPERIOR COURTS AND COURTS OF ASSIZE.

Above these intermediate courts are courts of appeal with headquarters in various parts of the kingdom (Rome, Milan, Palermo, Naples, Venice, etc.). They have branches or sections which hold sessions in the less important cities. Each court of appeal, moreover, has a special section which serves as a labor court and decides controversies which arise under the provisions of the labor charter and other laws relating to the rights of employers and workers. Finally, as has been mentioned, there is the court of cassation at Rome with final jurisdiction in all civil and criminal cases. As in France the court of cassation is a large body and its judges are assigned to sections or divisions of the court. This court also serves as a tribunal for deciding controversies as to the respective jurisdictions of the ordinary courts and the administrative courts.

3. COURTS OF APPEAL.

4. THE COURT OF CASSATION.

For Italy, like France, has a separate system of administrative law

and administrative courts. The general principle is the same in both countries, namely, that public officers are not amenable to the jurisdiction of the ordinary courts for acts performed in their official capacity. So administrative courts are maintained for the hearing of complaints against such officials. In each Italian province there is an administrative court made up of the prefect and certain other provincial officers. Appeals from the decisions of this court may be taken, in most cases, to a special section of the council of state which sits in Rome.

ADMINISTRATIVE LAW AND COURTS.

Other sections of the council of state have various administrative functions such as the scrutiny of royal decrees as to their form, the approval of state contracts, and so forth. The council as a whole, has more than fifty members, all of whom are appointed by the crown on recommendation of the minister of the interior. They may not be removed, or transferred, or reduced in salary except under conditions which are prescribed by law. These conditions are such as to afford them a reasonable permanence of tenure under ordinary circumstances, but all councillors not amenable to Fascist influence have been eliminated by one means or another.

THE ITALIAN COUNCIL OF STATE.

Thus the Italian judiciary, in both its regular and administrative branches, has been coördinated into the totalitarian structure of the Fascist state. It has been made subordinate to the executive branch of the government. As will be seen in the next chapter this has facilitated the extinction of what democratic countries have known as civil liberties. "They who give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety," wrote wise old Benjamin Franklin nearly two hundred years ago. That axiom is as true today as it ever was, but a considerable portion of the world does not seem to realize it.

In addition to the various books listed at the close of the last chapter mention may be made of G. A. Chiurco, *Storia della Rivoluzione Fascista 1919–1929* (5 vols., Florence, 1929) which is the most comprehensive history of the Fascist reconstruction, from a Fascist point of view. Eugène Godefroy, *Le royaume d'Italie* (Paris, 1929) explains in concise form all the political changes which took place during the first seven years of the Mussolini régime. A more recent volume by P. Chimenti, translated into French under the title *Droit constitutionnel italien* (Paris, 1932), was prepared as a Fascist textbook. Alexander Robertson, *Mussolini and the New Italy* (2nd edition, London,

1929) is a favorable account of what fascism has accomplished Attention should also be called to J. S. Barnes, *Fascism* (New York, 1931), Bolton King, *Fascism in Italy* (London, 1931), and George Seldes, *Sawdust Caesar* (New York, 1935).

Excerpts from laws, decrees, speeches, and writings relating to contemporary Italian government are printed in Norman L. Hill and Harold W. Stoke, *The Background of European Governments* (New York, 1935), pp. 447-516.

CHAPTER XXXIX

ITALIAN POLICIES AND PROBLEMS

It is impossible to understand the age-long need which has always determined the general lines of Italian policy without taking into account the two principal factors which still govern Italy's present and future—the growth of her population and her geographical position in the Mediterranean.—*Francesco Coppola.*

THE HERITAGE OF THE PAST.

Italy is a land of problems. Some of them are the result of overpopulation; others have arisen because the country is so badly lacking in natural resources such as coal, oil, and iron. Still other problems have grown out of Italy's geographical structure,—a long peninsula with three sides vulnerable to the sea. Finally, there are problems which have come by inheritance from the past, for example, the great issue between church and state which now appears to have been amicably settled. One might add, by way of supplement, that some of Italy's newer problems have also been the by-product of an ambition to justify her heritage from imperial Rome by displaying a genuis for war, conquest, and colonization.

ECONOMIC RECONSTRUCTION.

The problem of economic reconstruction into a corporative state has not yet been completely solved by the Italian government, despite the strenuous efforts of the past fifteen years. The widely heralded Charter of Labor (1927) was eulogized as a genuine social compact, a permanent treaty of industrial amity between employers and employed, marking the end of class warfare and worthy to be emulated by other nations seeking internal peace. Its sponsors gave assurance that it would guarantee to every worker "steady employment, fair wages, and a decent standard of living." To employers it promised relief from unjust labor demands, strikes, picketing, and sabotage. But the complaint is now frequently made that, far from winning a Magna Carta, the Italian worker has purchased "security" at the expense of all the rights which organized labor has been fighting for during the past hundred years. His standard of living has not been visibly raised. On the other hand the free and voluntary association of workers for

the promotion of their own interests, their right to choose their own officers, the right to strike,—all these have been surrendered for a complicated arrangement of syndicates, federations, confederations, joint corporations, and labor courts, each of which is under the domination of the Fascist party. Workers must abide by collective bargains which are made, on their behalf, not by representatives of their own choosing but by officials designated from the Fascist party organizations.[1]

Complaint is also made that the collective contracts, in the absence of the right to strike, are usually the result of a compromise in which the workers get only a small part of what they demand. Hence, it is said, these contracts tend to maintain the *status quo* and to perpetuate existing conditions rather than to promote improvement in the situation of labor. Since the negotiators are enthusiastic Fascists, the contracts are alleged to be more often the result of solicitude for the political interests of the Fascist party than for the economic interests of the employers or workers involved. Italian labor leaders, when they dare express their views (which is not often), protest that they and their fellow workers could do better if permitted to bargain for themselves without government intervention. In losing the right to strike they feel that labor has surrendered its most powerful weapon.

CRITICISMS OF THE COLLECTIVE CONTRACT SYSTEM:

1. THEY PERPETUATE EXISTING CONDITIONS.

Data gathered from the collective contracts which have been made public during the past five years seem to indicate that the system has not availed to raise the general level of wages in Italian industries or in agriculture. Nominal wages in many cases have declined and real wages have not appreciably advanced. Some investigators believe that real wages have declined also.[2] On more than one occasion, moreover, the government has ordered a horizontal reduction of wages by decree, thus reducing the figures agreed upon in collective contracts. This is done on the principle that measures designed to stimulate national pro-

2. THEY DEPRESS WAGES.

[1] For a typical collective labor contract see W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part III, pp. 96–113.

[2] See the data presented in Maurice Parmelee, *Bolshevism, Fascism and the Liberal-Democratic State* (New York, 1934), pp. 260–265; also the bulletin on *The Economic Situation in Italy*, published by the Foreign Policy Association (8 West Fortieth Street, New York City), Vol. X, No. 24 (January 30, 1935), p. 315. Compare also the table of wages and prices printed in H. W. Schneider, *The Fascist Government of Italy* (New York, 1936), p. 85.

duction are justified even when they bear heavily upon the individual categories concerned.

Critics of fascism also complain that there is no longer any place in Italy for labor leaders in the English or American sense. The workers, in their syndicates and federations, have no recognized leaders chosen by themselves. In the making of collective labor contracts they are represented, as has been said, by Fascist politicians who are not of their own choosing. Hence it is not surprising that American labor leaders, to the extent that they know anything about the relations of capital and labor under fascism, are bitterly opposed to anything which looks like a Fascist movement in the United States. They realize full well that the success of such a movement would eject them from their positions of leadership. What they do not seem to realize is that sit-down strikes, violence, and the warfare of one labor organization against another lead inevitably to government intervention and to political control over all labor relations.

3. THEY DISCOURAGE LEADERSHIP.

As for the employers or captains of industry in Italy, they too have been considerably disillusioned, especially during the past three years. In its early stages fascism professed a high regard for the sanctity of private property. Fascism arose, in fact, as a protest against communism, and for several years Mussolini assured Italian industrialists that the corporative state had no intention of going into business or competing with private concerns. It would regulate, not own or operate. But government regulation of business, as Italy has discovered, does not stop at mere regulation. What happens is that regulation, being usually inexpert, tends to make business unprofitable to its owners. Then it becomes essential to help business with government subsidies, or with loans. Presently the government finds that it has acquired a heavy financial interest in the state-aided industries and to protect this interest must regulate them further or take them over altogether.

FASCISM AND PRIVATE PROPERTY.

Thus in 1933 the Italian government intervened to salvage various Italian industries from bankruptcy by establishing the Industrial Reconstruction Institute, a counterpart of our own Reconstruction Finance Corporation. This Institute made loans to many large industrial concerns and eventually became the virtual owner of them. Early in 1936, therefore, Mussolini startled the outside world (but did not surprise those

WAR INDUSTRIES TAKEN OVER.

familiar with the normal evolution of a planned economy) by announcing that the government would take over all large Italian industries concerned with the production of materials which might be needed for national defense.

BIG BUSINESS AND WAR PREPARATIONS.

The reason given for this step was the alleged likelihood of a general European war, in which case it would be prudent to have all the large Italian chemical, metallurgical, and various other industries mobilized under the government's immediate control. Such action would forestall war profiteering, as in the last World War, and would enable the nation to throw its entire industrial resources behind the army. The real reason, as a matter of fact, was that the Italian government had advanced so much money to some of the great industries that it could see no prospect of recouping itself except by taking them over. Nor is it likely that this process of nationalization will stop with large industries which might be useful in war time. There is every likelihood that it will go farther.

THE REDUCTION OF UNEMPLOYMENT.

Unemployment has been reduced in Italy since 1933 (according to the officially published figures) but this end has been achieved by greatly increasing the number of men on the public pay roll, including the army and the navy, as well as by the stimulus to industry which was given by the Ethiopian war and the upbuilding of national armaments. These enterprises have kept great numbers of Italian industries working overtime during the past few years, but since they have been largely financed by increasing the national debt this stimulus cannot operate indefinitely. Meanwhile the glamor of fascist triumphs in Ethiopia and Spain, as well as in the field of diplomacy, have served to alloy the discontent that internal difficulties would otherwise have caused.

THE ENDLESS CHAIN OF OFFICIAL REGULATION.

Whenever troubles have arisen in the economic order the Fascist leaders have tried to meet them by issuing regulations. But in alleviating one problem they have usually created another, and in dealing with the second problem they have created a third, until the process has become a never-ending one. One decree reduces wages; then another is required to make a corresponding reduction in the rents charged for workers' homes and in the prices of food. Every such decree or regulation requires more officials for its enforcement until in time a great regulating bureaucracy is built up. Eventually the machine

becomes so unwieldly that it breaks down and has to be repaired by still further decrees.

ITS LESSON.

The lesson of the totalitarian state in Italy is that when a government undertakes to make industry conform to what it regards as the political interests of the state or the strengthening of a political party, there will be a continuous round of problems, not one of which ever solves itself. One move leads to another, regulation leads to regimentation, and regimentation to virtual state ownership, until in the end the principle of private property must become meaningless. The ownership of property may ostensibly remain in private hands but the control of every detail in the use of it passes to the government. Already the Fascist government is in complete control of Italian banking, credit, foreign trade, and foreign exchange. One by one it is nationalizing the larger industries. When industrialists accept the idea of a totalitarian state, as they did in Italy, they start the institution of private property on its way to the guillotine.

A GENERAL SUMMARY.

From what has been said in the foregoing paragraphs it will be seen that one cannot correctly visualize the temper of present-day Italian political life by merely surveying the governmental institutions. The totalitarian state is primarily an economic unity. Fascism has preserved in it, for the time being, the forms and methods of capitalist production, but these have been subjected to rigid and far-reaching dictatorial surveillance. Neither employers nor workers enjoy self-government under the intricate corporative system which has been built up. The Italian citizen has ceased to function as a citizen; he has become a cog in the corporative mechanism. The two great European political ideals of the nineteenth century were democracy and liberalism. Both are today in total eclipse throughout the Italian peninsula.

BUDGET AND DEBT PROBLEMS

BUDGETS, DEFICITS, AND DEBTS.

Even more serious than the problem of maintaining a planned industrial economy on a corporative basis is the difficulty which the Italian government has encountered in the field of public finance. Before the World War Italy had trouble in making her budgets balance. The war, of course, increased the Italian public debt enormously and placed a heavier burden of interest charges upon the post-war budgets. The years 1919 to 1922 were marked by annual deficits of huge propor-

tions which were liquidated by borrowing money and thus increasing the national indebtedness still more. Italy's public debt in 1914 was only sixteen per cent of the estimated national wealth; but by 1922 it had risen to nearly thirty-five per cent. The old government found itself unable to retrench expenditures sufficiently and lacked the courage to overhaul the tax system.

Beginning with 1922, however, Italian public finances underwent some improvement. The new Fascist government cut expenses, reconstructed the system of taxation, and brought both columns of the budget more nearly together. For a short time, indeed, it managed to make them balance. The floating portion of the national debt was properly funded and its carrying-cost reduced. The lira, Italian unit of currency, was stabilized in value. Whatever one may think of Fascist political philosophy, it is at least certain that Mussolini, during the middle twenties, was able to steer his country away from what looked like inevitable financial collapse.

FASCIST FINANCIAL REFORMS.

But the great economic depression which began in 1929–1930 came to Italy as to all other countries. And as elsewhere it slackened industry, curtailed foreign trade, increased unemployment, and threw public budgets out of gear. In spite of extremely burdensome taxes the Italian government could no longer make both ends meet and a series of heavily unbalanced budgets necessitated a still further increase in the national debt. As the foreign market for Italian government bonds was not favorable, the new issues were sold for the most part to Italian banks and individual investors, the sales being made under a considerable measure of Fascist compulsion. Italian owners of foreign securities, moreover, were ordered to report all such holdings to the government, which exchanged them at will for its own bonds. No foreign securities were permitted to be sent out of the country except under government auspices and no Italian citizen was allowed to leave the realm without official permission. An attempt was also made to bring under government control the considerable body of Italian subjects who live abroad.

EFFECTS OF THE DEPRESSION.

The Ethiopian campaign placed Italy under the necessity of importing large quantities of oil, gasoline, cotton, and other war materials from foreign lands. This resulted in a large excess of imports over exports, despite strenuous efforts to discourage all imports except those es-

THE UNFAVORABLE TRADE BALANCE.

sential for war purposes and to encourage exports of all kinds. The unfavorable trade balance had to be liquidated to some extent by payments in gold, and this shipping of gold out of the country greatly depleted the reserve behind the Italian paper currency. This paper money is now on a purely fiat basis, the metallic reserve being only a small fraction of the currency's face value.

TRADE AND COMMERCE

Population has given Italy some of her problems, while geography has furnished others. Place the Italian peninsula upon a same-scale map of California. It will not cover the whole of this single state. Yet California has only six million inhabitants while Italy has forty-two. With so dense a population and such inadequate natural resources, Italy has become dependent upon other countries for her raw materials of industry and for a considerable portion of her food supply as well. These have had to be procured, for the most part, by means of sea transportation, by access from a single great maritime waterway. For Italy is the only great European nation with a frontage upon a single sea. France has the Atlantic and the Mediterranean, Germany the North Sea and the Baltic, Russia the Baltic and the Black Sea, while Great Britain has her "Seven Seas." But Italy is exclusively Mediterranean, for the Adriatic is only a projection of the greater waterway. Indeed, Italy has no other easy means of commercial intercourse with the rest of the world, for her northern frontiers are guarded by mountains which make transportation difficult. Four fifths of Italy's commerce is maritime. Her imports and exports, her security, her very existence have thus been dependent upon her ability to keep this one avenue of trade free and open.

PROBLEMS ARISING FROM GEOGRAPHY.

Yet Italy does not control the sea which means so much to her. England holds one entrance at Gibraltar and another at the Suez Canal, besides being entrenched at Malta. France stands sentinel at Toulon and at Byzertá. The whole southern shore of the Mediterranean, with the single exception of the Libyan desert, is under the aegis of these two countries. Thus the Italians have stood besieged within their own ocean. A blockade of Italy's ports might at any time shut off essential supplies of raw material and thus paralyze the industries of the nation. This became quite apparent during the Ethiopian war when the League of Nations tried to apply "sanctions" to Italy by shutting off

BESIEGED WITHIN HER OWN OCEAN.

certain materials. The attempt did not succeed because some nations would not coöperate in the embargo, and also because the list of prohibited supplies did not include the most essential ones, particularly oil and its products. But the episode demonstrated the inherent economic weakness of the Italian commonwealth.

THE PROGRAM OF RELIEF FROM THIS SITUATION.

It has therefore seemed vital that the Italian government should strive to remedy this situation by several far-reaching measures. *First*, it has tried to decrease Italy's dependence on foreign raw materials, especially on coal and oil, by developing hydroelectric power for industry. The Fascist government has also sought to increase the home production of foodstuffs, particularly of wheat. Some measure of success has attended both these efforts. *Second*, the government has endeavored to increase the production of manufactured goods for export and to curtail the importation of non-essentials, thus securing a favorable balance of trade. To this end the Italian merchant marine has been heavily subsidized and the tax burdens on shipping reduced. Concerns engaged in the export trade have been aided by government financing. The tariff on imports has been raised. Commercial treaties have been negotiated with several countries. These various measures have helped to narrow the gap between imports and exports, but the balance is still on the wrong side.

MILITARY, NAVAL, AND COLONIAL EXPANSION.

Third, the Fascist government has entered upon a program of naval and air-force expansion. Italy is determined to be in a position where essential supplies cannot be shut off by blockades or sanctions. Dependence for this security is being placed not only upon increased naval strength, especially in the form of submarines and small fast-moving surface craft, but upon a huge fleet of airplanes. This program has been carried to a point where it is now the belief of the Italian government that Gibraltar, Suez, Malta, and the other outposts of Great Britain in the Mediterranean are no longer to be feared. *Fourth*, and finally, the Fascist government is demanding for Italy a place in the sun, in other words colonies and overseas possessions as elbow room for her surplus population, sources of raw materials, and markets for manufactured commodities. It was in keeping with this aspiration that Italy, in 1935–1936 undertook the invasion of Ethiopia (Abyssinia) which resulted in the conquest of that country.

TERRITORIAL EXPANSION

THE ETHIOPIAN CONQUEST: THE PRELIMINARIES.

The story of Italy's colonial ambitions and enterprises, leading up to the Ethiopian conquest, is a long and not an altogether edifying one. When Italy became a unified nation in 1871, most of the territories available for colonization had already been acquired by other countries, especially by Great Britain, France, Holland, Spain, and Portugal. It was an Italian who discovered the new world, yet Italy never gained the slightest foothold in either of the two great continents which Columbus found Italian merchants permeated far into Asia during the early modern centuries, yet their country never acquired a single foot of colonial territory in the Near East. In 1871 there were still opportunities on the north coast of Africa, and Italy began to cast covetous eyes on Tunis where there were many Italian immigrants. But France was too quick and forestalled her there. Consequently the Italian government had to be content with some of the left-over shreds and patches of the Dark Continent. In due course Italy acquired Eritrea on the Red Sea and Italian Somaliland farther south. This brought her into contact, and eventually into controversy with Ethiopia, but an Italian invasion of the latter country in 1896 was repulsed. This setback caused Italy to abandon her dream of an Ethiopian empire, but not permanently, for after Mussolini's accession to power the project was revived.

Reasons for a declaration of war upon Ethiopia were not difficult to find. There were boundary disputes and clashes between armed border patrols. The Italian government presently decided to settle the matter by military action. In so doing it merely added another chapter to the sordid chronicle of Europe's penetration into Africa, motivated chiefly by economic avarice and imperial greed.

THE LEAGUE AND THE SANCTIONS.

Ethiopia, as a member of the League of Nations, called for sanctions under the terms of the League covenant, and some sanctions were applied to Italy, notably the withholding of financial credits and the refusal of League countries to supply her with munitions. The League also banned certain other exports to Italy, and prohibited all imports from that country. But not all the members of the League joined wholeheartedly in applying these sanctions, nor did the list of prohibitions prove to be sufficiently comprehensive. It did not include oil, for ex-

ample, although oil has become a war material of the most vital importance when large air forces and motorized transport facilities are involved.

THE IMMEDIATE RESULTS.

Great Britain, feeling that the security of her own African interests was involved, took the lead in urging League action of a drastic sort, but France held back. The French government, in this attitude, was influenced by a strong desire to assure for France the friendship and coöperation of Italy in the event of a future Franco-German conflict. At any rate Italy was able to complete the conquest of Ethiopia, although the cost of the venture was enormous and it is questionable whether the new territory will prove to be a source of considerable profit. The immediate result, however, was to strengthen the Fascist domination of Italy and to increase the prestige of Mussolini as the leader of his people. Meanwhile Ethiopia has been annexed outright and the Italian king has been proclaimed emperor,—a gesture marking a further step toward the realization of Mussolini's professed ideal, which is to revive the Rome of the Caesars.

THE ROMAN QUESTION

THE VATICAN AND THE CONGRESS OF VIENNA.

One of Italy's most embarrassing problems for many years, but now settled for the moment at least, concerned the relations of the government and the Papacy. The origins of this question go back a long way, back to the fourth century when the capital of the Roman empire was moved to Constantinople and the Papacy secured an opportunity which ultimately placed it in possession of the Eternal City. But it is not necessary to follow the history of the Vatican through the middle ages and down into the modern centuries. It is enough to begin with the Congress of Vienna (1814–1815) which confirmed the Pope in possession of Rome and the Papal States as a civil sovereign. During the years down to 1870, therefore, the Pope occupied a dual position. He was the head of the Roman Catholic hierarchy in all countries, and he was also the secular sovereign of Rome and of the States of the Church.

THE PAPAL STATES.

These states had no constitution. There were no limitations on the powers of the Pope as a secular ruler. He had ministers, but no parliament. He appointed governors and civil magistrates; he promulgated the laws, and by his authority the taxes were levied. This secular rulership of the Vatican had some meritorious features, but

the practice of combining temporal with spiritual rulership has never proved very satisfactory anywhere.

At any rate the people of Rome and the Papal States desired a representative system of government, and in 1848 they clamored for a constitution quite as loudly as did the people in other parts of the country. Pope Pius IX granted a constitution, but this action did not allay the discontent, and during the trouble a short-lived Roman republic was established. The French government intervened as protector of the Papacy, however, and restored the temporal power of the Vatican. The constitution was abolished. Things were put back on their old footing. But the success of the nationalist movement in the other Italian states kept the Roman question alive and forced it to the front wherever the future of Italy was under discussion.

THEIR GOVERNMENT.

So the whole problem resolved itself into this: Italy was determined to be united, with Rome as her capital. That necessarily involved termination of the Pope's temporal power. Until 1870 France stood by as the guarantor of Papal sovereignty and the Italian government had to restrain its Roman ambition. But when Napoleon III threw his country into the ill-starred war with Prussia and was forced to surrender at Sedan, the Italians lost no time in turning the French débâcle to their own advantage. In 1870 Italian troops entered Rome on the heels of the French withdrawal and thus, after twenty-five years, realized Cavour's dream of a completely reunited Italy. The temporal power of the Holy See was declared to be at an end, and what was left of the Papal States were incorporated into the Italian kingdom.

THE TAKING OF ROME (1870).

Now it was not the intention of the Italian government to embarrass the Pope in the exercise of his spiritual rulership; on the contrary it desired to accord the Vatican every privilege and immunity consistent with the exercise of the new national sovereignty. In keeping with this attitude the Italian parliament, in 1871, passed a comprehensive statute known as the Law of the Papal Guarantees. The general purpose of this statute was to ensure the Pope full freedom of action as supreme pontiff. It therefore accorded him most of the privileges of a civil sovereign. All offenses against him were made equal in seriousness to offenses against the king. He was confirmed in his use of the Vatican and Lateran palaces, with all their grounds and buildings,

THE LAW OF THE PAPAL GUARANTEES (1871).

free from taxes perpetually. The law provided that ambassadors and other diplomatic officials accredited to the Vatican should have all the legal immunities given to other ambassadors, including freedom from arrest by the Italian authorities. Italian officials were forbidden by the law to enter the precincts of the Vatican without the Pope's permission, or to censor communications between the Papacy and the outside world. Finally, the statute provided that an annuity of three and a quarter million lire (then nearly $650,000) per annum should be paid each year to the Holy See from the royal treasury as compensation for the loss of Papal revenues due to the taking of Rome.

THE POPE'S REFUSAL TO ACCEPT IT.

Although these guarantees went a long way they did not satisfy the Papal authorities, who felt that Italy had done a wrong which could not be set right by diplomatic courtesies, tax exemptions, or money payments. Hence, while the law of 1871 remained on the statute book until 1929, each successive Pope declined to recognize its provisions in any way. Without exception, all the Popes from 1871 to 1929 refused to set foot outside the Vatican grounds, or to take a single lira of the government's annuity. So bitter was the resentment of Pope Leo XIII that he advised all loyal Catholics to refrain from voting, or from accepting any office in the Italian government, and in 1895 the advice was stiffened into a command by the encyclical *Non Licet*. But this policy of non-coöperation did not prove a success. Italians as a people are too fond of politics, and of official emoluments, to abstain from activity in public affairs.

"NON LICET."

RELATIONS BETWEEN THE VATICAN AND THE ITALIAN GOVERNMENT.

The decree *Non Licet* was not formally revoked, but its rigidity was considerably softened by Pius X, who not only permitted but encouraged Italian Catholics to vote whenever their abstention would result in the election of an avowed Socialist or anyone hostile to the church. The promulgation of this new policy led to the forming of a Catholic party in Italy, somewhat analogous to the Centrum in Germany; but prior to the close of the World War it did not develop any large measure of strength in the Chamber. This was partly because the restoration of the Pope's temporal power was deemed to be one of its principal aims and the great majority of the Italian people regarded that as an impossibility.

During the World War, however, the relations between the Vati-

can and the Italian government became somewhat more friendly and when the war came to a close the Catholic party was reorganized with a new name and a somewhat broader program. It became the *Partito Popolare*, or People's party, with a platform which advocated many reforms in government but made no mention of the Roman question. Among internal reforms the *Popolari* declared for woman suffrage, proportional representation, reconstruction of the Senate, together with a long list of changes in local government, in the judicial system, and in national finance. On the other hand they were against the Socialists on religious grounds, and proposed a solution of the industrial problem by means of social insurance, coöperative production, and the protection of the worker by law.

THE "POPOLARE" PROGRAM.

This program was not altogether irreconcilable with the aims of the Fascists, and although the new electoral laws involved the eclipse of the People's party, an entente cordiale between the government and the Vatican began to develop. As part of the Fascist program to exalt the moral and spiritual aspects of education, religious instruction was reintroduced in the public schools and the olive branch was held out in other ways. In this new atmosphere overtures were made by the government for the opening of negotiations which might lead to the framing of a concordat. The Vatican responded and negotiations began. As the issues were delicate, and difficult of adjustment, the conferences (which were conducted without publicity) extended over more than two years; but they eventually resulted in a full agreement (June, 1929).

THE NEW FRIENDLINESS AND THE FINAL RECONCILIATION.

This agreement was embodied in three documents: a treaty, a concordat, and a financial convention. The treaty is of international significance because it set up a new sovereign state, or, more accurately, restored a portion of an old one. The second document, the concordat, was concerned only with the relations between the Papacy and the Italian government; while the financial convention adjusted all the monetary claims of the Vatican arising out of the loss of temporal power in 1870. All three agreements were signed simultaneously and form part of a general settlement.

THE AGREEMENTS OF 1929:

The states of the church, which had been incorporated into the kingdom of Italy, comprised about 16,000 square miles and extended from mid-Italy to the sea. Their population exceeded three millions.

The new state, established by the treaty of 1929, and to which the name Vatican City has been given, includes an area of about a hundred acres only. It comprises the Vatican and the Lateran palaces as well as numerous small additional tracts of territory, with a present population of about five hundred. Thus Vatican City is the smallest among the sovereign states of the world. But it has all the appurtenances of civil sovereignty, with the right to send and receive ambassadors, with its own coinage and postal system, its own laws and courts. In addition some other tracts (such as the Villa of Castel Gondolfo), not included in Vatican City, are given the status of extra-territoriality, that is, they are removed from the jurisdiction of the Italian government and placed under the civil control of the Holy See. All this territory is declared to be neutral and inviolable, and freedom of intercourse with other states is guaranteed at all times, including countries which may be engaged in war with Italy. On the other hand the Holy See has undertaken not to embroil itself in international combinations or to take part in international conferences "unless all the parties in conflict appeal unanimously to its mission of peace." Vatican City, although a sovereign state, has not sought admission to the League of Nations.

1. THE TREATY.

The concordat is a longer document, containing forty-five articles. The Catholic religion is given official recognition as the state religion of Italy. Religious instruction is made compulsory (for Catholics) in all public schools. The teachers in this field are chosen by the church and paid from the public treasury. But the officials of the church have no authority with respect to the teaching of secular subjects in the school curriculum. Under the Law of the Papal Guarantees the bishops of the church in Italy were named by the Pope but the approval of the Italian government was also required. Under the concordat of 1929 this approval is no longer essential, but the government may interpose an objection to the appointment of any Italian bishop if there are political grounds upon which such objection may be based. Before assuming charge of his diocese, moreover, the new bishop must take an oath of civil allegiance.

2. THE CONCORDAT.

Several provisions of the concordat deal with the question of marriage and divorce. Prior to 1929 a civil ceremony was required in the case of all marriages. This is no longer necessary, if certain rules concerning registration are complied with. Priests and members

of religious orders are exempted from the obligation of military training and service except that in case of a general mobilization they may be called upon to serve as chaplains. This exemption does not include students for the priesthood or novitiates in the monastic houses. Various religious holidays are accorded civil recognition. The person of the Pope is declared inviolable. Titles of honor and of nobility conferred by the Sovereign Pontiff are recognized by the Italian government, including all that have been bestowed since 1870. And various other matters which had long been in controversy were settled by the provisions of the concordat.

VARIOUS CONCESSIONS.

THE FINANCIAL CONVENTION.

The financial agreement of 1929 is brief and businesslike. The Papacy, although entitled to a large annuity during the years between 1870 and 1929 had never taken any of it, because such action would have been construed by the Italian government as an acceptance of the Law of the Papal Guarantees. The payment agreed upon in 1929 was a compromise on both sides. The Vatican accepted seven hundred and fifty million lire (about $39,000,000) in cash and a billion lire (about $52,000,000) in government bonds as a full adjustment of all its financial claims. To set its seal on the entire series of agreements the Holy See formally declared the Roman question to be "definitely and permanently settled."

IMPORTANCE OF THE SETTLEMENT.

Thus was solved an embarrassing problem with which Italian ministers and ministries had unsuccessfully wrestled for two generations. Francesco Crispi once declared that the minister who could clear this problem off the slate would be entitled to rank as the greatest Italian statesman of all time. That is an exaggeration, of course, but the achievement was assuredly one of large dimensions. Various motives were attributed to Mussolini in connection with it, but there is no need to go searching for far-fetched explanations. Fascism seeks to eliminate all conflicts between section and section, between class and class, thus enabling Italy to function as a unit. What more natural than that it should strive to settle one of the most outstanding and apparently irreconcilable conflicts—that between church and state. It will be retorted, of course, that it settled this one by impairing the territorial integrity of the kingdom, and in a technical sense that is true; but fascism is pragmatic in its point of view and as a practical matter the impairment of Italy's territorial integrity is exceedingly slight. It

affects less than one-one-hundred-thousandth part of the national area. On the other hand the agreements have procured for the government great advantages both in international and domestic politics.

The maintenance of public order in Italy is entrusted to the Fascist militia. Originally this was an irregular body of Black Shirts without any legal status, but in due course it was incorporated into an organization of volunteer militia, and in 1930 the government stipulated that none but members of the Fascist party could belong to it. The Fascist militia has a permanent staff of general officers, but the rank and file do not perform full-time service. They are called out from time to time for duty or for drill and are paid for this service only. At other times they live at home and pursue their regular civilian vocations. The Fascist militia is organized after the fashion of Caesar's legions, with cohorts, centuries, and maniples. Its function is to prevent disturbances of public order and to put down any attempts to interfere with the Fascist government.

THE FASCIST MILITIA.

Mussolini, like Hitler, maintains a bodyguard of vigilantes. It is directly under the orders of the head of the government and its function is to protect the Fascist leaders as well as to unearth conspiracies against the established order. The very existence of this OVRA, as it is called, was kept secret until 1930 when it became known through its redoubled activities.[1] Even yet its work is done without publicity but it is as effective, although not so ruthless, as the Russian OGPU was a decade ago.

THE OVRA.

There are no independent, non-partisan newspapers in Italy today. Fascist control of the press began ten years ago and has been gradually made more stringent. Under the present regulations the publisher of every newspaper must be someone who has been approved by the government. All those who write what is published in newspapers and other periodicals must be listed with the authorities, and the latter may deny this right to anyone who is thought to be out of sympathy with the Fascist régime. A newspaper which offends the authorities may have its issues confiscated, and for repeated offenses may be suppressed altogether. Political news is virtually uniform in all the Italian newspapers, for it is handed to them by the ministry and printed without

FASCISM AND THE PRESS.

[1] Its full name is *Organizzazione Vigilanza Reati Anti-fascisti* or Society for the Surveillance of Anti-Fascist Activities.

modification. The government professes to "welcome criticism but not opposition," reserving to itself, however, the function of determining whether a newspaper article falls in one class or the other. Italy, therefore, is full of bootlegged news,—and it is about as genuine as bootlegged liquor. As for the editorials which appear in Italian newspapers nowadays, they are merely the pyrotechnics of fawning politicians trying to please the powers that be. The correspondence which representatives of foreign newspapers send out of the country is subject to rigid censorship; the same is true of telegraph and cable messages as well as radio broadcasts. One result of this is that rumors of every kind, even the most fantastic, are passed along in whispers and freely exported across the frontiers.

FUTURE DIPLOMACY.

Various happenings during recent years have brought Italy's foreign ambitions into bolder relief. The Spanish insurgents, during the civil war in that country, were greatly aided by man-power and munitions from Italy. In this enterprise the Italians received cordial support from Germany. For many years, on the other hand, Italy opposed German plans for the absorption of Austria, but in 1938 permitted the *Anschluss* to take place without even a protest. Thus Germany has moved to the Italian border, with no buffer state intervening. Many thoughtful Italians fear that in the long run this will force Italy to serve as a definitely junior member of the Berlin-Rome partnership. But as an offset to an undue dependence on German coöperation, the Italian government has met both Great Britain and France halfway in their endeavor to negotiate agreements of international amity. Italy, in a word, seeks to hold the balance of power in Europe.

Material on the various matters covered in the foregoing chapter may be found in many of the references given at the close of the two preceding chapters. In addition one may call attention to H. Goad and M. Currey, *The Working of a Corporate State* (London, 1933), Carmen Haider, *Labor and Capital under Fascism* (New York, 1930), F. Pitigliani, *The Italian Corporative State* (London, 1933), and Bulletin No. 15 of the Royal Institute of International Affairs entitled "The Economic and Financial Position of Italy" (London, 1935). M. T. Florinsky, *Fascism and National Socialism* (New York, 1936) compares the Italian and German systems.

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CHAPTER XL

SOVIET RUSSIA: ITS GOVERNMENT

The proletarian revolution in Russia marks a decisive break with the revolutionary traditions and ideology of the past. To compare it with previous revolutions is to miss its significance and misrepresent its character. There are no historic standards with which to measure the proletarian revolution in Russia; it is making its own history and creating its own standards.—*Nicolai Lenin.*

Even well-informed Americans often have erroneous ideas about Russia. They think of Russia as a nation in the sense that England, France, or Italy are nations. On the map they have seen a vast expanse of territory sprawling westward over Northern Europe and eastward over Northern Asia—with an area of more than eight million square miles, or about three times that of the United States—all of it designated as Soviet Russia. They read that there are about 170,000,000 Russians inhabiting this expansive territory, all under one government, with Moscow as its capital. It is natural that they should think of the U.S.S.R. as though it were a unified country like the U.S.A.

RUSSIA AS A NATION.

But Russia is not a nation in that sense. It is an irregular checkerboard of territories and races. Before the war Russia was made up of at least ten quite distinct and none-too-closely-related areas, peopled by Russians, Poles, Jews, Finns, Letts, Turko-Tartars, and Mongolians. First, there was Russia proper, extending from the Baltic Provinces to the Ural Mountains, and from the Arctic Circle to the Black Sea. This great region is peopled almost altogether by Russians—Great Russians, Little Russians, and White Russians. Northwest, west, and southwest of this region were Finland, Latvia, Lithuania, and Russian Poland, inhabited by peoples of a different speech and religion. Southeast, south, and east were Caucasia, Russian Central Asia, and Siberia. Here, again, people differed from the rest of the empire not only in speech and religion but in race. Such was Russia before the war, a huge salamander, comprising one seventh of the land surface of the globe, but every inch of it contiguous. As a result of the peace treaties some of this territory has been lost but the greater part of it remains

ITS DIVISIONS BEFORE THE WORLD WAR.

within what is now known as the Union of Socialist Soviet Republics (U.S.S.R.).

The old Russian empire was built up by accretion. In the earlier stages its growth was much like that of the United States. Traders and settlers moved to the frontier where they came into contact with native tribes whose lands they presently absorbed. But during its later stages the expansion of the Russian empire was more like that of Rome. It was a blood and iron performance. War and conquest were its main features. Annexations were made as ruthlessly as in the days of Roman power.

HOW THE OLD EMPIRE WAS CREATED.

Unfortunately the Czars were not organizers and administrators as the Caesars had been. They built up a civilization that was Byzantine rather than Roman, Asiatic rather than European. This was due in part to the fact that Russia, during the thirteenth century, came under the domination of the Tartars, and in the fifteen and sixteenth centuries under the spell of Byzantine theological and political ideals. Not until the reign of Peter the Great (1689–1725) did Russia become subject to the influence of European civilization in any measurable degree. Czar Peter did his best to Europeanize his empire but he was able to give it little more than a thin veneer.

THE ASIATIC INFLUENCE.

PETER THE GREAT.

Yet Russia played an important part in European diplomacy during the eighteenth and nineteenth centuries. The echoes of the French Revolution hardly penetrated the great steppes; but when Napoleon was at the height of his power he made his artillery heard there. Every student of modern history has read of the Corsican's march to Moscow, his retreat through the snows, and the collapse of his lordly venture. The Russians had a good deal to do with Napoleon's overthrow, for it was his ill-starred expedition into the heart of their country that sapped the military strength of France and made Waterloo possible. Russia could conquer, but was herself immune from conquest.

RUSSIA IN THE NINETEENTH CENTURY.

Everything favored the development and maintenance of an absolutism in Russia—the vast extent of the country, the variety of races included in it, the illiteracy of the people, the militarism, the primitive rural civilization, and the Oriental traditions. So the government became and remained despotic. From time to time the Czars made various gestures in the direction of popular government but these did not

HER POLITICAL DEVELOPMENT.

mean much. The rulers were not willing to convey the substance of power to the representatives of the people. The wave of democracy which swept over Western Europe during the year 1848 led to the framing of new constitutions in France, Italy, and Prussia; it even compelled some political readjustments in Austria; but upon Russia it had virtually no influence at all.

ALEXANDER II AND THE ABOLITION OF SERFDOM (1859–1866).

Some years later, in 1861, the Czar Alexander II abolished serfdom in Russia and improved the economic status of the peasantry; but he failed to break the power of the landlords or grant the people any participation in the conduct of their national government. Alexander did, however, establish a certain measure of self-government in the provinces and districts. In these the people were permitted, by indirect election, to choose delegates to district assemblies (Zemstvos) which were to exercise the right of levying local taxes, as well as to make regulations concerning such matters as roads and bridges, schools, public health, public buildings, and poor relief. In the cities the Czar authorized the establishment of municipal councils for the exercise of those functions which the district assemblies performed in the provinces.

THE LIBERAL MOVEMENT (1866–1905).

These local assemblies soon afforded rallying points for a liberal movement which aimed at political reform in the empire as a whole. They grew steadily more assertive in their demands for a constitution and for the calling of a national parliament. But this liberal movement did not make much progress until after the close of the nineteenth century. Liberalism, in the autocratic circle surrounding the Czar, was regarded as synonymous with revolution. The imperial authorities were so fearful of the very words constitution and parliament that they went to the ridiculous extreme of censoring them in the newspapers.[1] Meanwhile the teachings of Karl Marx and his disciples were turning many of the younger liberals to socialism and providing recruits for a Social Democratic party.

THE WAR WITH JAPAN.

Thus the situation drifted until Russia engaged in her war of 1904–1905 against Japan and met defeat on land and sea. This national humiliation caused such widespread popular resentment that the government became alarmed. The Social Democrats in Russia grew more numerous and became more outspoken, despite the persecution to which they were

[1] Sergius A. Korff, *Autocracy and Revolution in Russia* (New York, 1923), pp. 7–8.

subjected. The disorders which they were able to foment, especially among the industrial workers, now gave the authorities more worry than ever. In the rural districts the peasants began seizing the lands of the nobility and pillaging their mansions. Martial law had to be declared in many portions of the country. Students in the cities started rioting and the universities were closed. These widespread and serious disorders made it clear that the old policy of reaction and repression would have to be modified. So the imperial government, to secure its own preservation, decided that a move must be made in the way of bending to the popular clamors for a national parliament.

In 1905, therefore, the Czar issued a series of decrees which professed to establish a constitution for his people. These decrees did not in fact abolish the autocratic system; on the contrary they asserted the executive supremacy of the emperor and reaffirmed his right to exercise an absolute veto over all legislation. They declared the Czar's ministers to be responsible to him alone. On the other hand they made provision for a national parliament of two chambers, namely, an upper house or Council of the Empire, and a lower house or Duma. In the Council of the Empire half the members were to be appointed by the emperor and the other half chosen for nine-year terms by the provincial assemblies, the landowners, the nobility, the chambers of commerce and industry, the church, and the universities. Membership was restricted to persons over forty years of age who held academic degrees. Members of the lower house, or Duma, were to be elected through the district assemblies or Zemstvos, which were hereafter to be constituted on a basis of manhood suffrage. It was stipulated that no discussion of the form of government, or of military or foreign affairs, should be allowed in the Duma, but its assent was made necessary for the enactment of general laws.

THE CONSTITUTION OF 1905.

On paper this looked like a good start. At least it brought Russia, in 1905, to the point that England had reached in the days of Magna Carta (1215). But unhappily it did not prove to mark the beginning of a new era, and for two reasons: first, because the Russian people did not know how to use their new endowment of power in moderation, and, second, because neither the Czar nor his ministers accepted the new political arrangements in good faith.

WHAT IT AMOUNTED TO

The Dumas which were elected under the new arrangement contained many liberals and radicals; some of whom went so far as to

declare that the mission of the Russian parliament was not to pass laws but to precipitate a revolution. Getting out of hand, the first two Dumas were dissolved and in 1907 the suffrage was curtailed by imperial decree. Thereafter the parliament ceased to be representative and its functions became little more than advisory in character.

RUSSIA IN THE WORLD WAR.

This was the situation when Russia entered the World War. The Duma was in session but could exert no influence upon the conduct of affairs. The amazing incompetence and corruption of the government, however, soon stirred all classes of the people to indignation. Ill-equipped armies were sent into the field to be slaughtered. Measures for provisioning the civilian population broke down, and the people of the cities went hungry while large quantities of foodstuffs were being illicitly shipped into Germany and Austria. Under the pressure of popular resentment the Duma became aggressive. Its members began to assail the government for its ineptitude. Encouraged by this show of independence the workers in the cities grew bolder and began a series of strikes. Thereupon the government issued decrees ordering the members of the Duma to go home and commanding the workers to terminate their strikes. The Duma refused to disband and the striking workers defied the government's decrees. The Revolution followed like a streak of lightning from the sky.

THE REVOLUTIONS OF 1917

THE MARCH REVOLUTION (1917): HOW IT BEGAN.

The Revolution of March, 1917, began at Petrograd just before the United States entered the war on the side of the Allies. It began as revolutions usually do. The striking workmen and the hungry population of Petrograd came out on the streets demanding food. The government tried to disperse the crowds by calling out the troops of the Petrograd garrison, but the soldiers refused to obey orders. Instead they joined the mobs which were now thronging the streets. Like the Parisians of 1789 the rioting crowds now stormed the Russian Bastile—known as the Fortress of St. Peter and St. Paul—and set the prisoners free. Meanwhile a self-appointed committee of the Duma assumed control of the situation, appointed a new ministry, established a provisional government, and promised that a new constitution would be prepared. At this juncture the Czar was compelled to issue a decree abdicating the throne and was held prisoner with his family.

Simultaneously with the formation of the provisional government the representatives of the workers organized in Petrograd a soviet of workers' and soldiers' delegates which, without any formal authority, began to exercise governmental powers. This soviet and the provisional government had different points of view and both undertook to issue decrees which were often contradictory. The soviet, by a series of decrees which the provisional government was forced to accept, abolished the old military discipline and thus sapped the morale of the army. To prevent this working at cross purposes the provisional government and the soviet attempted a coalition, but their joint efforts did not avail to check general disorganization.

ITS SECOND PHASE.

As the situation grew worse a radical branch of the Social Democrats, known as the Bolsheviks,[1] secured for themselves an increased share in the management of soviet affairs and insisted that the Revolution must be an economic as well as a political one. They were supported in this demand by the fact that the workers were already seizing the factories, while the peasants were driving out the landlords and taking the land as their own. These Bolsheviks did not constitute even a respectable minority of the Russian people, but they had a definite program which the soldiers and workers could understand. Immediate peace and a dictatorship of the proletariat were their objectives. What is more, they possessed capable leaders in Nicolai Lenin and Léon Trotsky, two Bolsheviks who had been exiled by the Czarist government, but had now managed to make their way home again. Soon these leaders were able to get control of the soviets in Petrograd, Moscow, and the other cities. Then with the aid of the troops they threw the provisional government out of the picture.

THE NOVEMBER REVOLUTION (1917).

Thus the second stage of the Russian Revolution was accomplished. A congress of the soviets now set up a council of people's commissars, with Lenin at its head, while Trotsky took charge of the army. This new government forthwith deserted the Allies and proceeded to negotiate a separate treaty with Germany. The treaty was a humiliating one for Russia, but the new soviet rulers accepted it in order that

RUSSIA BECOMES A COMMUNIST STATE.

[1] In Russian the term *Bolshevik* means majority, as contrasted with *Menshevik* which means minority; but in this case the Bolsheviks did not actually constitute a majority of the Social Democratic party as a whole.

they might be free to go ahead with their political and economic overhauling of the country. Meanwhile they issued a series of decrees which abolished private property, and declared all railways, banks, factories, mines, and land confiscated for the use of the proletariat. The Czar and his family were put to death; many members of the nobility, landowners, former Czarist officials, and intelligentsia were killed, imprisoned, or exiled; soviet commissioners were placed in charge of industries everywhere; and the Orthodox Church was disestablished. Within a few months the country was transformed into a communist state—so far as decrees could accomplish it.

These drastic steps alarmed Russia's former allies, who had large stores of munitions and supplies lying at various Russian ports such as Murmansk, Archangel, and Vladivostok. They sent troops to guard their supplies and the ports at once became rallying points for anti-Bolshevik leaders who undertook to start counter-revolutions. This action played into the hands of the Bolshevists, for it tended to unite the Russian people against what they looked upon as foreign invasions aiming to restore the Czarist autocracy. The counter-revolutionary movements were quickly suppressed.

FOREIGN INTERVENTION.

THE OLDER SYSTEM OF SOVIET GOVERNMENT

In the summer of 1918 the Congress of Soviets, now known as the All-Russian Congress, adopted a constitution for the "Russian Socialist Federated Soviet Republic" which had been prepared for it by the Bolshevik leaders who now began regularly to call themselves Communists. This constitution was not framed by men who had been elected for the purpose nor was it submitted to the Russian people for acceptance. But it served as a starting point, and five years later became the model on which a constitution for the entire Union of Socialist Soviet Republics was framed[1] The scheme of government set up by this latter document continued in operation down to 1936, when a new and quite different constitution was adopted.

THE SOVIET CONSTITUTION OF 1918.

By the constitution of 1923 Russia became a federated republic of seven constituent republics, with a Union Congress of Soviets as the

[1] This constitution, although not ratified until January, 1924, was put into operation six months earlier. It is printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part V, pp. 88-106.

supreme political authority.[1] This congress was made up of delegates from urban soviets (or local councils of workers) at the ratio of one delegate for every 25,000 workers, and of delegates from the soviets of rural areas at the ratio of one delegate for every 125,000 peasants. No one was allowed to vote for delegates if he were an employer, or if he had been in any way connected with the old Czarist administration.

AND THE UNION CONSTITUTION OF 1923.

Between meetings of the Union Congress the supreme legislative power was vested in a central executive committee, which in turn appointed a presidium or steering committee to do most of the work. Executive authority was devolved upon a ministry, or Union Council of Commissars, the members of which were ostensibly elected by the central executive committee but in reality were appointed by the leaders of the Communist party. Each commissar served as the head of an administrative department such as foreign affairs, war and marine, foreign trade, transport, labor, food, and finance. The decrees and regulations of this Council of Commissars were made binding on the several soviet republics within the Union.

Under the constitution of 1923 wide powers were vested in these Union authorities, including control of treaties and foreign affairs, the right to declare war and make peace, conclude foreign loans, regulate foreign trade, make contracts of concession, regulate railroads, posts and telegraphs, control the military establishment, establish a uniform currency and credit system for the Union, also a uniform system of taxation, and standardize the system of weights and measures. The Union Congress was also empowered to "lay down general principles to be followed by the constituent republics in the matter of civil and criminal law, judicial procedure, labor legislation, and schools." Finally, the Union authorities were given the right to veto any law or decree of a constituent republic if in conflict with the constitution.

POWERS OF THE UNION GOVERNMENT.

But the formation of the U.S.S.R. did not abrogate the constitutions of the various constituent republics. Each of these republics retained its own soviet organization of government, although it became substantially alike in all of them. Ostensibly the seven republics were autonomous, but they had in fact little discretion except to carry out the orders which came from the Union government at

THE GOVERNMENT OF THE SEVEN CONSTITUENT REPUBLICS.

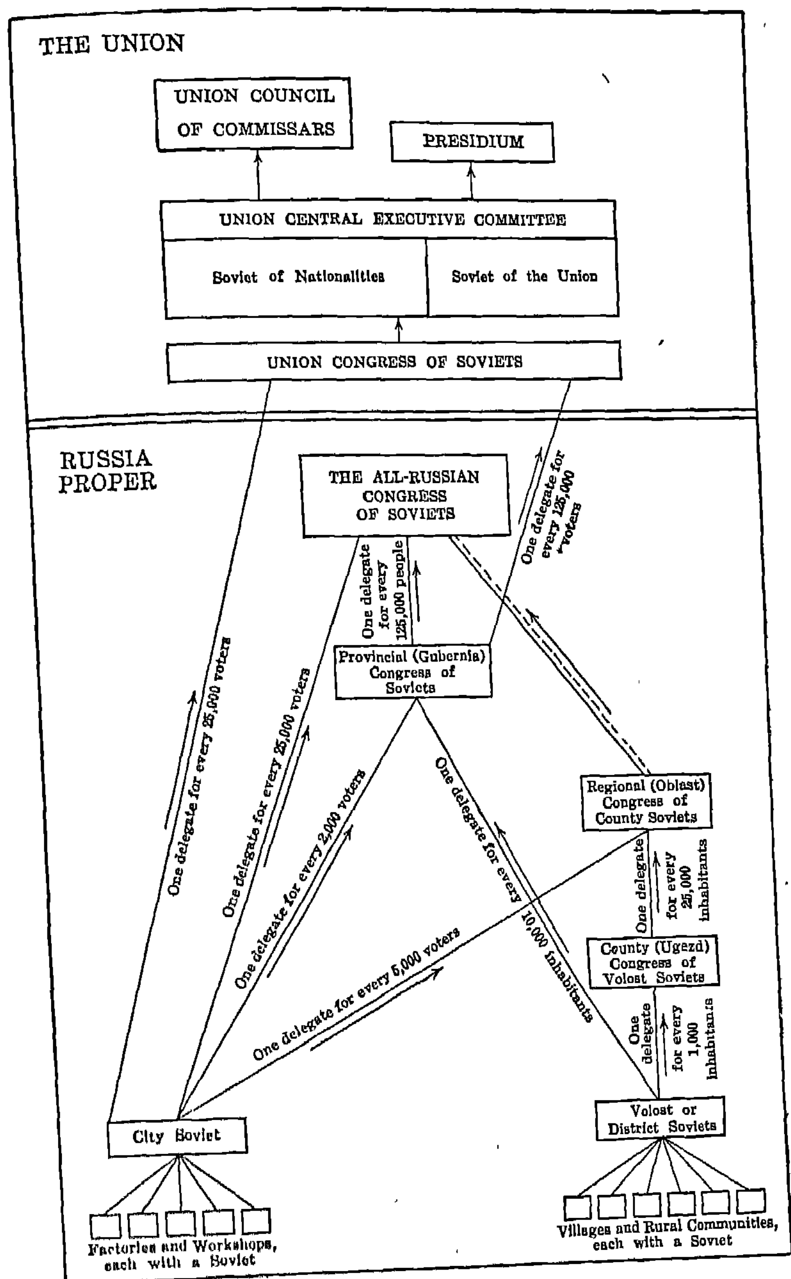
[1] These seven constituent republics were the Russian, White Russian, the Ukrainian, Turkoman, Uzbek, Tajik, and Transcaucasian republics.

Moscow. Nevertheless within the bounds of general policy laid down by the latter the governments of the component republics retained authority over various local matters, such as education, health, social insurance, the administration of justice in the lowest courts, and the encouragement of agriculture.

Take a look at the chart on the next page. It shows the way in which the government of the U.S.S.R. and the government of Russia proper (R.S.F.S.R.) were organized during the years preceding 1936. It will serve to indicate, in comparison with another diagram a few pages later, just how far the new constitution sets up a framework of government differing from the old. The outstanding features of the older plan were its complexity and cumbrousness. Between the people and their supreme rulers a long and devious route was provided—with all real responsibility lost on the way. The rural voter in his local soviet chose delegates to a district soviet, the latter, in turn, named delegates to higher soviets, and the latter sent representatives to the All-Union Congress which appointed a central executive committee and this body chose the supreme executive authorities. The industrial worker in the cities was given a more direct and more weighty representation because he was deemed to be more reliable in his allegiance to the soviet system.

THE BASIS OF REPRESENTATION.

Another outstanding feature of the scheme of government which functioned in the U.S.S.R. prior to 1936 was the basis upon which the people obtained representation in the legislative bodies. In England, France, and the United States the people are asked to choose their representatives on a *geographical* basis, that is, the voters of a ward, county, arrondissement, constituency, or district are given the right to elect the members of the lawmaking body. No matter what their vocation, all those who reside in a given area vote together. Thus a member of Congress, in the United States, may represent a district in which there are farmers, industrial workers, miners, railroad operatives, professional men, shopkeepers, truck drivers, unemployed workers on relief, and all the rest. He represents them as a single unit of population, without regard to their varied circumstances or conditions of daily life. The American theory of representation is that a voter's interests are determined by the place where he lives rather than by the vocation which he follows. In other words the geographical system of representation assumes that locality-consciousness is stronger than class-consciousness. That is why a lawyer is deemed to be a fit and


THE UNION
UNION COUNCIL OF COMMISSARS
PRESIDIUM
UNION CENTRAL EXECUTIVE COMMITTEE
Soviet of Nationalities
Soviet of the Union
UNION CONGRESS OF SOVIETS
RUSSIA PROPER
THE ALL-RUSSIAN CONGRESS OF SOVIETS
One delegate for every 125,000 voters
One delegate for every 125,000 people
Provincial (Gubernia) Congress of Soviets
One delegate for every 25,000 voters
One delegate for every 25,000 voters
One delegate for every 2,000 voters
One delegate for every 10,000 inhabitants
Regional (Oblast) Congress of County Soviets
One delegate for every 25,000 inhabitants
County (Ugezd) Congress of Volost Soviets
One delegate for every 1,000 inhabitants
One delegate for every 5,000 voters
City Soviet
Volost or District Soviets
Factories and Workshops, each with a Soviet
Villages and Rural Communities, each with a Soviet

proper representative of shopkeepers or farmers if he resides in the same congressional district with them, while a farmer or a shopkeeper is not regarded as eligible to represent them if he lives outside the district.

WHY VOCATIONAL REPRESENTATION IS PREFERRED.

The soviet system sought to establish a *vocational* basis of representation. It is true that geographical areas had to be utilized also, but only as a convenient way of making the vocational basis workable. People of different employments voted separately—miners in one group, iron-workers in another, soldiers in a third, peasants in a fourth, and so on. Each group chose representatives from its own class. A miner or an iron-worker in the Union Congress did not represent Kiev, or Odessa, or Minsk, or the city from which he happened to come; he represented a class of people, irrespective of their residence. According to its admirers this soviet plan provided "an unmeasurably better form of representation" than the world had ever tried before, for it used as its basis "real groups with a common purpose," in contrast with geographical districts which were declared to be "nothing but meaningless conglomerations."

THE ARGUMENT FOR IT.

As a theory, this arrangement had a good deal to be said for it. The geographical basis of representation is defective because it leaves out of account the fact that every voter belongs to a class or group, and is not merely the resident of a district. His class allegiance may be far stronger than his allegiance to the locality; usually it is. Business men, wage-earners, farmers, and professional men do not overlook the interests of their own economic and social fellowship. There is no essential bond between two voters of different occupations for the mere reason that they happen to live in the same county. Neither can it always be taken for granted that men of the same occupation will think alike on questions of public policy. On the whole, however, it may fairly be argued that occupation forms a better basis in this respect than geography can hope to provide under modern conditions of life.

THE ARGUMENT AGAINST IT.

But there is another way of looking at the question. Can the well-being of the whole people be best promoted by distributing political power according to channels through which the various classes derive their livelihood? The Soviet theory of government is based upon the principle that a man's occupation determines his attitude on questions of public policy. But should it be encouraged to do so? In the United States we have gone

on the principle that men are American citizens first,—miners or iron-workers afterwards. We have tried to maintain the doctrine that a man's interest in the welfare of the nation as a whole should transcend his interest in any class or organization. Accordingly, while a congressman is elected by the voters of a district, he does not (if he is the right kind of congressman) merely represent that district. He is supposed to represent the whole people, and he is paid by the whole people of the United States for doing it. One frequently hears complaint that the average congressman does not always think in such terms but is too exclusively concerned with the interests of his own district. Now if he were elected by a class would he not feel in duty bound to represent that class, and could it properly be urged upon him that his function is to serve the whole people? Would not the vocational plan of representation narrow the horizon of the representative to an even greater extent than the geographical arrangement does?

THE OUTCOME OF THE EXPERIMENT.

Vocational representation, in any event, is no longer required by the new constitution. Each administrative district is permitted to make its own rules concerning the time, place, and procedure for elections, subject to the requirement of universal suffrage and a secret ballot. In most cases the voting takes place on an occupational rather than on a geographical basis because the people have been accustomed to this procedure, but all those who are not employees (e.g., housewives, handicraftsmen, shopkeepers, professional men, etc.) now vote by districts and not by occupations. The friends of vocational representation argue that the system did not prove unsatisfactory but that it is no longer needed because all class antagonisms and divergences of vocational interest in Russia have now disappeared. When you have liquidated all classes but one, and all parties but one, and all leaders but one, it does not much matter what basis of representation you use, or indeed whether you use any basis at all.

THE STALIN CONSTITUTION (1936)

FRAMING AND RATIFYING THE NEW ORGANIC LAW.

Early in 1935 a commission of thirty-one members, under the chairmanship of Josef Stalin, secretary-general of the Communist party, was appointed to frame a revised constitution. More than a year later a draft was prepared and published for discussion by the people. Then, in the closing weeks of 1936, this draft was submitted to the All-Union Congress and including some amendments was

adopted with virtual unanimity. It went into force without ratification by the people. Here is the way in which a eulogist of the proceedings describes the final scene: "Then the Congress decisively refused a roll-call on the final adoption, which they carried with cheers and singing. Without the help of a band, but firmly and clearly, the 2016 delegates sang three stanzas of the *International*. . . . December 5th was declared a national holiday- Day of the Constitution."[1]

Let the balalaikas ring,
Raise anew the chorus,
Isn't it a happy thing
The road that lies before us?

ITS SCOPE AND NATURE.

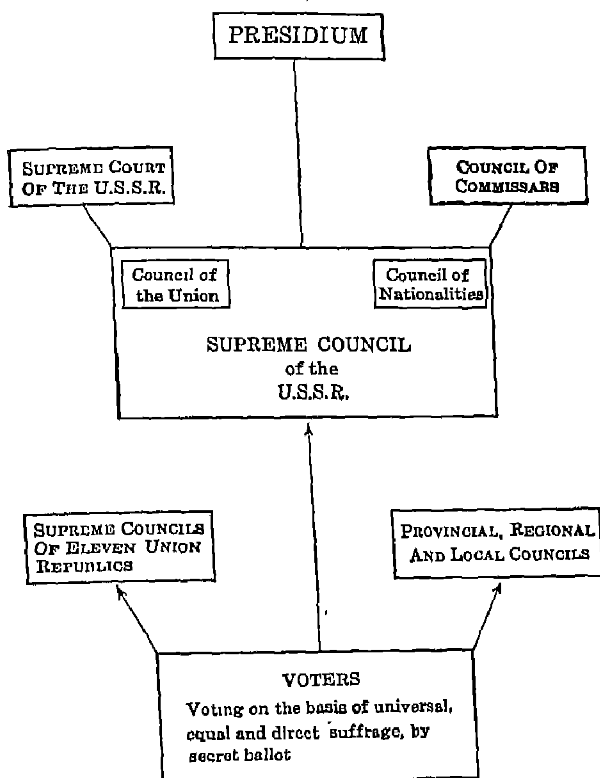
The constitution of 1936 (commonly known as the Stalin Constitution) declares the U.S S R. to be a "socialist state of workers and peasants." It is also declared to be a federated state on the basis of the voluntary association of soviet socialist republics with equal rights. There are now eleven of these constituent republics instead of the original seven. The increase results from the creation of two new ones (Kazak and Kirghiz) together with the division of Transcaucasia into the three republics of Armenia, Georgia, and Azerbaijan. The Union government is given authority over foreign affairs, national defense, the acceptance of new republics into the federation, foreign trade, national economic planning, taxation and revenues, the administration of banks, industrial and agricultural establishments, as well as trading enterprises of All-Union significance, transport and communications, money and credit, social insurance, public debts, citizenship, judicial organization and procedure, civil and criminal law, together with the establishment of "basis principles" to be observed throughout the Union in the field of education and public health. The All-Union government is likewise given power to ensure the conformity of the constitutions of the associated republics with its own. And in case of a conflict between a law of the Union and that of a constituent republic the former prevails. The constitution can be amended by a two thirds vote in the two chambers of the Supreme Council (*Verkhovny Soviet*) or All-Union parliament.

THE SUPREME COUNCIL.

Legislative power in the U.S.S.R. is vested by the new constitution in this Supreme Council, composed of two chambers. This body is the successor of the All-Russian Congress of Soviets under the old constitution. The two

[1] Anna L. Strong, *The New Soviet Constitution* (New York, 1937), p. 64.

THE GOVERNMENT OF THE U. S. S. R. UNDER THE 1936 CONSTITUTION



chambers of the Supreme Council are known as the Council of the Union and the Council of Nationalities. The former is made up of deputies chosen by popular vote from election districts, one for every 300,000 population. The Council of Nationalities is also chosen by popular vote from election districts, but its members are distributed on a uniform basis to the various constituent republics (e.g., twenty-five to each constituent republic irrespective of its population) and to other existing political units.[1] All elections are by secret ballot, with universal suffrage. Citizens who have reached the age of eighteen years (with the exception of criminals and mentally deficient persons)

[1] For the details see Article 35.

are entitled to vote. The two chambers are of about the same size and enjoy an equal right to initiate legislation.

ITS PROCEDURE.

To become effective, a law requires the concurrence of both chambers. No distinction is made, as in some other countries, between money bills and other projects of legislation. In case of a deadlock between the two chambers the disagreement is settled by a joint committee of conference, as in the United States. If this committee cannot effect an agreement, or if its decision does not satisfy one of the chambers, the question is reconsidered by both bodies. And as a last resort the presidium (see *below*) may dissolve the chambers and order a general election to decide the issue.[1] Sessions of the two chambers begin and end concurrently. By a majority vote the two chambers can enact any law and by a two thirds vote they can amend the constitution.

THE PRESIDIUM.

Between sessions of the Supreme Council its powers are vested in a presidium or standing committee of thirty-seven members which it elects. This body, it is anticipated, will be the real legislature, the Supreme Council will probably do little more than hear reports and ratify the acts of the government. The presidium is also given a number of special powers by the constitution, for example, the granting of pardons, the awarding of decorations, and the appointment of investigating commissions. In addition it appoints and may remove the high command of the armed forces; it may decree a general or partial mobilization, and may also declare war if the Supreme Council is not in session; it ratifies treaties, and "gives interpretations of the law." [2]

THE COUNCIL OF PEOPLE'S COMMISSARS.

The presidium of thirty-seven members will function during most of the year as the legislative organ of the Soviet Union while supreme executive power is vested by the constitution in the Council of People's Commissars of the U.S.S.R. This body, which corresponds roughly to the cabinet in other governmental systems, is made up of commissars or ministers who are chosen by the Supreme Council at a joint session of its two chambers, but this choosing is merely a perfunctory ratification of decisions made by the Politbureau of the Communist

[1] In the discussions which preceded the adoption of the new constitution a proposal was made to eliminate the Council of Nationalities and establish a unicameral legislature. But Stalin successfully argued against this proposal, using much the same arguments that were advanced in the American constitutional convention of 1787 for the equal representation of the states in the Senate.

[2] Articles 49–54.

party. So with cabinet responsibility. By the terms of the constitution the Council of People's Commissars of the U.S.S.R. is responsible to the Supreme Council (to both chambers of it in joint session), but its only real responsibility is to the party bureaus.

The Council of People's Commissars includes two types of commissariats. There are a number of All-Union commissariats which function over the entire U.S.S.R., and have no duplicating commissariats in the eleven constituent republics. These All-Union commissariats have charge of national defense, foreign affairs, foreign trade, railways, water transportation, communications (i.e., posts and telegraphs, etc.), and heavy industry. There are no corresponding commissariats in the constituent republics because the latter have no jurisdiction in these matters. But the Council of People's Commissars also includes a number of "Union-Republic" commissariats, or ministerial departments, which are duplicated in each of the eleven republics. These deal with matters over which these constituent republics have some jurisdiction, namely, agriculture, food supplies, finance, light industry, internal trade, justice, health, and other local affairs. Their work, accordingly, is concerned with the proper coördination of administrative effort in these last-named fields throughout the Union.

THE COMMISSARIATS.

The constitution of the U.S.S.R. provides that the All-Union commissariats administer their respective fields directly, or through subordinate organs which they appoint, but that the Union-Republic commissariats shall perform their administrative functions, as a rule, through similarly named commissariats in the constituent republics. The latter are appointed in each case by the authorities of these republics. Or, to put the matter in another way, the control of administrative work is centralized but the performance of it is to a considerable extent decentralized. To keep things in articulation it is provided that each of the All-Union commissariats shall maintain a representative at the capital of each republic, and that each republic shall have a representative at Moscow. The latter has a right to sit with the All-Union Council of People's Commissars whenever any matter affecting his own republic is under consideration.

RELATIONS BETWEEN THE CENTRAL AND LOCAL ADMINISTRATIVE AUTHORITIES.

Each member of the Council of People's Commissars of the U.S.S.R. is assisted by a group of advisers. In addition there are numerous special advisory boards, and some boards which have more

than advisory powers. Chief among these are the Council of Labor and Defense, the State Planning Commission, the Committee on the Arts, and the Committee on Higher Education. The first of these bodies is entrusted with the formulation of general plans for strengthening the economic phases of the national defense, while the second coördinates the "planned economy" of the various republics with that of the Union. But neither of them is provided with the machinery for carrying its plans into operation. The execution of all plans is entrusted to the Council of People's Commissars or to the individual commissariats.

ADVISORY AND PLANNING BOARDS.

The constitution of 1936 makes no provision for a president of the Soviet Union. The All-Union Council of People's Commissars has its own chairman, but he is not a prime minister in any sense nor does he rank as the titular head of the Union government. The ceremonial functions usually performed by the head of the state in other countries are in Russia entrusted to the president of the central executive committee. Michael Kalinin holds this office at the present time, but the world rarely hears of him. When foreign ambassadors come to Moscow they present their credentials to the chairman of the presidium. No foreign diplomatic agents are accredited to the governments of the various constituent republics although the Union constitution declares these republics to be autonomous. They are even given the right to secede from the Union if they so desire. But this right to secede does not give anyone the right to advocate secession. Such advocacy would be promptly branded as counter-revolutionary and would result in the quick liquidation of everyone concerned in it.

NO PROVISION FOR A SOVIET PRESIDENT.

Does the new constitution establish responsible government through ministerial responsibility in Soviet Russia? The answer is that technically it does. The All-Union Council of People's Commissars is in effect a ministry. Its members function together as a cabinet and individually as cabinet ministers. They are appointed by the Supreme Council or Union parliament and are responsible to that body. On paper there is no essential difference between Soviet Russia and the French Republic in the matter of ministerial responsibility. But in practice there is a great deal of difference. The Soviet commissars are not actually chosen by the legislative body.

IS THERE MINISTERIAL RESPONSIBILITY IN RUSSIA?

They are handpicked by the Politbureau of the Communist party, which in turn is made up of men appointed by the secretary-general of that party. They are not responsible to the legislative body, or even to the presidium, save in a purely technical sense. Whether a commissar holds his post, or loses it, depends upon his standing with the party leaders, not with the parliamentary leaders.

THE SOVIET JUDICIARY

ITS GENERAL STATUS.

With one exception all the courts in Soviet Russia are state courts, not federal courts; they are judicial organs of the constituent republics, not of the Union. But they are uniform in all these republics. And Russian political philosophy, by the way, does not look upon the judiciary as a separate branch of the government, vested with a position of semi-independence as in other countries. It is part of the regular administration, like a commissariat of finance or of agriculture. Its function, like those of the latter, is to help carry out the general policy of the government and more particularly to safeguard the new social order against the machinations of its internal enemies. While the courts endeavor to protect the rights of all citizens as against one another, they do not have the function of protecting the citizen against his government, for according to the Soviet theory of justice it is unthinkable that the citizen should ever need such protection. He would need it only when he fails to agree wholeheartedly with the government, and then he would not deserve it.

THE LOWER COURTS.

There are three gradations of courts in the several constituent republics. First are the people's courts. One such court is provided for every district. Its personnel consists of a judge who is elected by the people of his district and two assessors or citizen judges who are selected from a panel of citizens. This panel is prepared by the local soviets through a special committee, and no one who is selected to serve as an assessor or citizen judge can be required to function for more than six consecutive days in any year. The judge and his two lay colleagues have equal powers in deciding the cases that come before them. This is in accordance with the Soviet principle that the administration of justice should not be wholly removed from the hands of the workers. In the United States this idea of letting the people participate in the administration of justice is embodied in the jury system, but trial by jury has never obtained any foothold in Russia. More than seventy per

cent of all the cases tried in the courts of Soviet Russia come to the people's courts, although these courts have no jurisdiction over crimes against the state unless such cases are brought before them by the public prosecutor, which does not usually happen.

REGIONAL COURTS.

Above the people's courts are regional courts, with judges who are elected, not by popular vote, but by the soviets of the regions which they serve. The term of these judges is five years. Regional courts serve as courts of appeal from the people's courts and they also have original jurisdiction over various offenses against the government, such as counter-revolutionary actions and misconduct on the part of public officials. While the people's courts deal with all manner of small controversies and minor crimes, the trial of serious crimes is within the jurisdiction of the regional courts from the outset.

SUPREME COURTS OF THE SEVERAL REPUBLICS.

Each of the eleven constituent republics has its own supreme court, but they are all constituted in the same way. The judges are chosen for five-year terms by the supreme councils or parliaments of the respective republics, but they must be persons who have served in the lower courts. These supreme courts hear appeals from the regional courts; they also have original jurisdiction over cases of exceptional importance which may be brought before them by the public prosecutor. When high officials of government in any of the republics are accused they are brought to trial in one of these courts.

THE SUPREME COURT OF THE SOVIET UNION.

Finally, there is the supreme court of the Soviet Union. Its judges are chosen by the Supreme Council (both Houses in joint session) for fixed terms of five years. The Union constitution declares them to be "independent and subject only to the law," but this high tribunal does not have any of the usual safeguards of judicial independence. It contains more than thirty judges and sits in three sections, criminal, civil, and military. These sections hear appeals, each in its own field, wherever it is alleged that a decision rendered in one of the supreme courts of the republics contravenes the general legislation of the Union. The supreme court of the Union also deals with conflicts between the republics and is the place of trial for any accused member of the Union government. It may, when called upon, render advisory opinions as to the constitutionality of laws and decrees, but it has no power to declare Union laws unconstitutional.

Outside the range of the regular judiciary there are various special courts, such as juvenile courts, land courts, courts of arbitration, and military courts. A special people's court deals with infractions of the labor laws. Military courts do not always confine themselves to the trial of military personnel but take civilian offenders within their purview at times. Procedure in all the courts, whether regular or special, is lacking in the traditional safeguards. There is no requirement that the accused shall have a public trial, because the constitution permits exceptions to be made and they are made. The constitution also guarantees to the accused "the right of defense," but persons charged with counter-revolutionary crimes are frequently given little or no opportunity to defend themselves. There is no provision for anything like a writ of habeas corpus wherewith to get anyone out of jail or back from Siberian exile. There are no regular jury trials. Extreme penalties are imposed for offenses which in other countries would not be regarded as flagrant, such as trying to leave Russia without a permit or concealing foreign currency.

THE SPECIAL COURTS.

The attorney-general or chief public prosecutor for the Soviet Union is chosen for a seven-year term by the Supreme Council. The constitution endows him with "the highest responsibility for the effective execution of the laws." His duty includes that of investigating the acts of Union officials and of prosecuting them before the supreme court of the Union if the occasion arises. There are also chief prosecutors in the constituent republics; they, in turn, appoint regional and district prosecutors. Since there are no practicing lawyers, in the usual sense, the defense of accused persons in Soviet Russia is undertaken by members of a society of advocates, organized under the supervision of the courts. These advocates must render assistance to defendants whenever called upon and must do it without charge if the court so orders.

THE PUBLIC PROSECUTORS.

The organization and control of local government is left to the individual republics and consequently varies somewhat in different parts of the Union. But the differences are not great or fundamental. There are provinces, districts, cities, and rural communities, each with its governing council (elected by universal suffrage) which appoints various commissars to do the administrative work. These commissars, like the French prefects, have a dual responsibility: to the local authorities who have ap-

LOCAL GOVERNMENT.

pointed them, and to the higher authorities whose general policies they must carry out.

Finally, the constitution of 1936 contains a comprehensive bill of rights. It guarantees the "right to work, and the right to rest," the right to education, freedom of speech, of the press, and of assembly. It forbids arbitrary arrests or detention and assures equal rights to all citizens irrespective of race or nationality. It goes further than any other constitution so far as formal guarantees of personal liberties (as distinguished from property rights) are concerned. But there is as yet not the slightest indication that these guarantees will be effective in practice. Strict control of the press, the radio, the theatre, and the schools has not been in the least relaxed. Ruthless terrorism is still directed against every symptom of organized opposition to the party in power. Secret trials and unadvertised executions continue as before. The glaring discrepancy between the constitution and the facts of Soviet life can hardly be overlooked by anyone, however sympathetic he may be.[1]

CIVIC RIGHTS.

The new rules relating to property rights are interesting and significant. Russia, during the past twenty years, has built up a socialist economy. The constitution distinguishes, therefore, between "socialized property," that is, property which is owned by the state or by coöperative groups, and "personal property," which may be owned by individual citizens. Socialized property includes land, waterways, mines, factories, railways, means of communication, banks—all the chief agencies in production or distribution. It also includes coöperative property such as the collective farms which have been organized under the Artel system, as will presently be explained.

THE RIGHT TO HOLD PERSONAL PROPERTY.

Personal property, on the other hand, embraces income from labor, savings deposited in state banks or invested in government bonds, dwelling houses occupied by their owners, automobiles maintained for personal use, tools, furnishings, and other personal belongings. A Russian citizen may now acquire a large amount of property, but it must be solely for his own use. He cannot acquire property "to be used in the exploitation of others," that is, to provide private capital for industry or

WHAT IT IMPLIES.

[1] For a vivid presentation of this point of view, by one who probably knows Russia better than any other living American, see the article on "Russia's Gold Brick Constitution" by W. H. Chamberlin in *The American Mercury*, Vol. XLII, pp. 181–186 (October, 1937).

to employ labor. All this, of course, is a considerable step away from pure Marxism. But the possession of personal property is not necessarily irreconcilable with a socialist economy. It does not involve a return to capitalism so long as the distinction set up by the new constitution is maintained, but the maintenance of this distinction may not prove to be easy. And in any event it must involve the recrudescence of classes in Russia, for there can be no "classless society" if some are permitted to accumulate "personal" property worth millions of roubles while others have none at all. Is it easy to believe that "all class distinctions and class antagonisms have been abolished" in a country where some of the people are permitted by the constitution and laws to earn ten times as much as others, live in mansions, own automobiles, and wear fine raiment, while the mass of the workers and peasants are barely able to provide themselves with the absolute necessities of life? Communist leaders are fond of declaiming that "the only liberty for the worker in democratic countries is liberty to starve." Yet the figures demonstrate that the per capita consumption of food by the workers in the United States is vastly greater than in Russia. To the Communist mind, however, this only goes to prove the truth of the cynic's proverb that "there is nothing so false as facts, except figures."

POLITICAL HISTORY AND BACKGROUND. Alfred Rambaud's *History of Russia* (3 vols., London, 1913) is a convenient source of information on the political history of Russia before the outbreak of the World War. A more recent work is G. Vernadsky's *History of Russia* (New Haven, 1929). James Mavor's *Economic History of Russia* (2nd edition, London, 1925) is a comprehensive book in its field. Events immediately preceding the revolution are explained in A. Meydendorff's *Background of the Russian Revolution* (New York, 1929), also in Baron Korff's *Autocracy and Revolution in Russia* (New York, 1923). A volume by P. P. Gronsky and N. J. Astrov entitled *The War and the Russian Government* (London, 1929) shows how the military mismanagement hastened the political collapse. On the revolution itself a useful book is W. H. Chamberlin, *The Russian Revolution, 1917–1921* (2 vols, New York, 1935).

THE SOVIET CONSTITUTIONS OF 1918 AND 1923. An English translation of the Russian constitution of 1918 is printed in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1920), pp. 376–400. The All-Union constitution of 1923 is printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part V, pp. 88–106. See also Andrew Rothstein, *The Soviet Consitution* (London, 1923), the same

author's *Soviet Russia* (London, 1924), W. R. Batsell, *Soviet Rule in Russia* (New York, 1929), and B. W. Maxwell, *The Soviet State* (Topeka, Kansas, 1934). An interesting booklet by Vera Micheles Dean, entitled *Soviet Russia, 1917–1933* (New York, 1933), gives a concise survey of developments during that period.

THE NEW CONSTITUTION. The All-Union constitution of 1936 is printed in W. E. Rappard and others, Part V, pp. 107–129, and as a pamphlet by the Carnegie Endowment for International Peace, No. 327 (New York, 1937). Josef Stalin, *Stalin on the New Soviet Constitution* (New York, 1934) is naturally authoritative. Mention should also be made of Samuel N. Harper, *The Government of the Soviet Union* (New York, 1938). An excellent unbiased survey of *The New Constitution of the U. S. S. R.* by Vera M. Dean is issued as a Foreign Policy Association Report, Vol. XIII, No. 3, April 15, 1937. The volume on *The New Soviet Constitution* by Anna Louise Strong (New York, 1937) is glowingly partisan.

See also the references at the close of the next chapter.

CHAPTER XLI

SOVIET RUSSIA: POLITICAL AND ECONOMIC PROBLEMS

The people never give up their liberties but under some delusion.—*Edmund Burke.*

In his speech to the All-Union Congress of 1936, when he presented the new constitution to that body, Josef Stalin gave definite assurance that no change was being made in the dominating position of the Communist party, which he praised as being composed of "the most active and politically conscious citizens." The Communist party remains the only party organization in Russia. No other group, under the new constitution (Article 141), is permitted to put forward candidates for election, although the Communist party has at present fewer than two million regular members in a total Russian population of 170,-000,000. It is true that the privilege of proposing candidates is also accorded by the constitution to "social organizations of working people," coöperatives, youth associations, and cultural societies, but all of these are strictly Communist organizations, under the party's control.

GOVERNMENT AND PARTY.

No one can hope to understand the actualities of government in the U.S.S.R. unless this complete domination of all its branches by the Communist party is clearly grasped at the outset. Not only is it the sole recognized political party, with a monopoly of nominations, but all important decisions on questions of governmental policy are made by its conventions, committees, officials, and bureaus, especially by the political bureau of the central committee of the Communist party of the U.S.S.R. (commonly known as the Politbureau) as will presently be explained. The government, as such, does not make these decisions; it merely ratifies them. No conflict of authority or opinion can arise between government and party because they are one and inseparable. The party, indeed, is the ultimate source of power. It supplies the motive power in government and is the great unifying force.

THEIR RELATIONS.

In illustration of this it may be pointed out that Josef Stalin is the real head of the government under the new constitution, as under the old. He is not president of the U.S.S.R., nor does he hold any other governmental office of high importance in it. His power comes from the fact that he is the secretary-general of the central committee of the Communist party, a position which he has held since 1922.[1] As such, however, he is the most powerful figure in Russia, for he controls the political bureau of the party which formulates all party policies and by so doing determines the program of the government. Stalin selects the members of this bureau (although they are ostensibly chosen by the party's central committee) and thus dominates the bureau's activities.[2] The Politbureau, in turn, is the steering committee which tells the government what to do.

THE REAL HEAD OF THE GOVERNMENT.

Americans should have no difficulty in understanding the relationship between government and party which has been outlined in the foregoing paragraphs. We have had exactly the same situation, time and again, in our own state and municipal governments. Repeatedly Americans have seen governors and mayors, legislatures and city councils merely ratifying decisions already reached by party leaders in secret conclave. They are not unacquainted with the spectacle of a party leader telling public officials what to do and how to do it. Whole books have been written about the Tweeds and Crokers, the Vares and Ruefs, the Hynicas and Hinky Dinks of American politics. Stalin and his Politbureau are merely the Russian counterpart of the American party boss and his inner ring of lieutenants who do his bidding. Like the latter, the Russian political bureau meets behind closed doors, and publishes no record of its deliberations, so that the first intimation of its decisions is brought to the people by official decrees issued under the signature of the regular governmental authorities.

AN AMERICAN ANALOGY.

In view of the complete supremacy which the Communist party has thus developed in relation to the Soviet government it is desirable that the organization of this party should be explained. And in this connection it should be repeated that the membership of the

[1] Stalin is also a member of the Union Central Executive Committee and a member of the Council of Labor and Defense, but his power does not come from either of these sources.

[2] He is the only remaining member of the Politbureau as it was constituted at the time of Lenin's death. All the others have been executed, driven to suicide, exiled, or imprisoned.

Communist party constitutes a very small minority of the Russian people. About half its members are industrial workers; the rest are peasants, government employees, army and navy personnel, white collar employees, and intellectuals. Admission to membership is given only to those who have proved themselves sound in the faith, and a period of probation is invariably required. This probationary period is relatively short (a year or so) for industrial workers; it is longer in the case of peasants, and for intellectuals it is longer still. No member of the "deprived categories," such as ministers of religion or monks, former landlords, employers or traders, is admitted under any circumstances. From time to time, moreover, there is a "purging" of the ranks, with the elimination of those whose partisan loyalty happens to come under suspicion.

ORGANIZATION OF THE COMMUNIST PARTY: MEMBERSHIP.

Discipline and loyalty are the fundamental obligations of every Communist. Freedom of discussion is tolerated within the party until a decision has been reached by the party congress or its central committee; then all argument, criticism, and differences of opinion must cease. This rule not only applies to the rank and file but is enforced in the highest circles of leadership as well. Every member of the party must unhesitatingly adhere to what is known as the "party line" in Communist theory and practice, with no deviation either to the right or the left. Expulsion from the party follows any show of non-conformity, however slight. In flagrant cases the recalcitrant party member may find himself stigmatized as counter-revolutionary and liable to be exiled or otherwise punished under the laws.

PARTY DISCIPLINE.

The base in the organization of the Communist party is what used to be called the "cell" or nucleus. It is now designated in official parlance as "the primary party organ." A cell may be formed in any factory, village, store, office, or collective farm,—or even on a Soviet ship at sea—provided there are at least three persons who subscribe to the party program, submit to party decisions, and pay membership dues. It may also be formed in any college, hospital, or other non-industrial establishment. In large industries there is a cell or primary party organ for each department, so that there are said to be over 150,000 of these cells in the entire country. But this does not mean that anyone can belong to a primary party organ. Admission is restricted to workers by hand or brain (including soldiers and public officials), and every

THE "CELLS."

applicant must be recommended by a designated number of Communists who are already members of the party in good standing. The admission of older workers is not favored, and recruits are now drawn mainly from the ranks of the new generation of workers who have been duly schooled in Communist ideology as members of the Comsomols, or Communist League of Youth.[1]

Something should be said concerning this organization, since the hopes of the Communists for the perpetuation of their supremacy rest mainly upon it. The Comsomols are associations of young people, including both sexes, between the ages of fourteen and twenty-three. Their total membership is said to be about six millions. This is made up of cells which have been formed not only in factories and offices but in schools and colleges as well as among young people in the agricultural villages. Admission is granted more or less freely to the sons and daughters of workers and peasants but not to the children of shopkeepers or other bourgeois vocations. Once enrolled in a Comsomol group the youthful members are vigorously indoctrinated with Marxist philosophy. If they show themselves adequately imbued when they reach the age of eligibility they are then qualified for admission to one of the regular primary party organs. This hope is continually held out to them as an inducement to show enthusiasm for the cause.

THE COMSOMOL.

Subsidiary to the Comsomol, and serving as feeders for it, are two organizations of younger boys and girls, known as the Pioneers and the Octobrists Boys and girls between the ages of ten and sixteen, of whatever parentage, may be admitted to provisional membership which is made permanent after they have shown themselves receptive to the teachings of their leaders who are provided by the Comsomols. Thus, from the age of ten years upwards, the Communist party makes elaborate provision for the political training of the younger generation.

PIONEERS AND OCTOBRISTS.

Above the party cells are the district, provincial, and regional party conventions. Each elects delegates to the one immediately above it. Finally there is a Communist party convention or congress for the entire U.S.S.R. This body was accustomed to meet each year during the earlier

THE PARTY CONVENTIONS.

[1] To designate a governmental agency it is the Russian practice to telescope several words into one, e.g., Commintern for Communist International If they had a Works Progress Administration they would not call it WPA but Worprogmin.

stages of Soviet rule; then it met every two or three years, but of late its gatherings have been even less frequent. With its two thousand delegates and alternates it is an unwieldy assemblage and can do little more than listen for a few days to keynote speeches. Ostensibly this All-Union convention is the supreme party organ, but it delegates all its powers during the long interval between meetings to a central committee (of about seventy members) which it elects by secret ballot. This committee, in turn, selects from its own membership a secretariat which keeps the records, a political bureau (Politbureau) to formulate party policies, and an organization bureau (Orgbureau) which has charge of party propaganda, supervises the subordinate conventions, and may either promote or demote members of the party.

THE PARTY BUREAUS

Ostensibly the members of these bureaus are elected by secret ballot at a meeting of the central committee. But in practice the secretary-general of the committee (Stalin) virtually dictates the membership of both bureaus, the Politbureau especially, and is himself a member of the latter. Everything done by the two bureaus is ratified in due course by the central committee and eventually by the All-Union convention of the Communist party at its next session, but such ratifications are merely matters of form. The real power rests with the secretary-general of the central committee and the two bureaus which he controls.

HOW CONSTITUTED.

Not only is governmental policy determined by these two party bureaus, but the selection of all the leading government officials is made by them. The Politbureau determines the policies and the Orgbureau determines who shall have a part in carrying the policies into effect. The decisions of the Politbureau, after being ratified by the central committee at one of its monthly meetings, are often promulgated in the form of decrees signed by Stalin as secretary-general of the party. These decrees are binding upon every Communist, even upon the highest officials of the government. Thus eventuates a curious arrangement under which the party leaders, as such, issue decrees having the force of law. In other words the dictatorship of the proletariat has become the dictatorship of the Communist party.[1] The Council of People's Commissars is designated by the constitution as "the highest executive and administrative organ

HOW THE PARTY DOMINATES THE GOVERNMENT PERSONNEL.

[1] Sidney and Beatrice Webb, *Soviet Communism: A New Civilization* (2 vols., London, 1936), Vol I, p. 370.

of state power" but this declaration does not mean what it says, for every commissar must be a Communist and as such must obey the instructions of his party leaders. In consequence the supreme executive organ of the U.S.S.R. is not supreme at all but obeys the decrees of the party just as any non-official member must obey them.

A DEMOCRACY IN FORM BUT NOT IN FACT.

One is likely to obtain, therefore, a wholly misleading impression concerning the realities of Russian government by merely reading the constitution of 1936. The eulogists of this document assure us that it is democratic in every line,—with its provisions for universal suffrage, secret ballots, a bicameral parliament and a responsible ministry. "Not a perfect democracy," they confess, "but a million times more democratic than the most democratic bourgeois republic." Surely it is giving a new definition to democracy when a political party, comprising in its membership only a small fraction of the whole people, arrogates to itself a monopoly of all the nominations for public office, creates its own party conventions, committees and bureaus, appoints all the higher officials of government and then, usually without even consulting these officials, directs what they shall do. If this be a democracy approaching perfection one is tempted to recall the saying of Edmund Burke that "a perfect democracy is the most shameless thing on earth."

ECONOMIC PHASES OF RUSSIAN GOVERNMENT

ORIGINAL ECONOMIC POLICY OF THE GOVERNMENT.

1. TOWARD AGRICULTURE.

The Russian Revolution, when the Bolsheviks took hold of it in November, 1917, became an economic revolution. It aimed to abolish capitalism and to establish a communistic state—to place control of all power, wealth, and property in the hands of the proletariat. The constitution of 1918 abolished private property in land and declared every foot of Russian soil to be the patrimony of the state. It added that the nationalized land was to be apportioned among agriculturists "in the measure of each man's ability to cultivate it." This constitution went farther and declared "all forests, all treasures of the earth, all waters of general utility, and all equipment, whether animate or inanimate," to be the property of the state. Such a declaration was not directed primarily against the nobility, for the peasants had driven out their landlords and taken the land as well as the stock and equipment that was necessary to utilize it. The government, although declaring the

land to be state property, did not at once attempt to dispossess the peasants but allowed them to keep and use the land, for the time being, as though they were the legal owners.

2. TOWARD INDUSTRY

Meanwhile, in the cities the owners of factories were ousted wherever they refused to accept the decrees of nationalization. Commissars, appointed by the government, were placed in charge of the industries, but these officials were expected to manage them in harmony with the wishes of the workers who functioned through workers' councils or soviets, one for each factory. The workers were paid in scrip which entitled them to obtain food and supplies from the government depots, for all private stores and all private trading were declared to be abolished. But this plan did not prove successful. The production of the factories declined, in part because the workers were now their own masters and could not be subjected to discipline; in part because they were underfed and unable to work at full efficiency; in part, also, because the only people who could manage the technique of industrial production had been put out of the way.

PARTIAL BREAKDOWN OF THE ORIGINAL SCHEME

The factories, moreover, found it impossible to get enough raw material. The government, as it turned out, was not able to provide this material nor could it supply enough food for the workers at its various depots, hence the whole population of the cities had to be placed on short rations. The peasants would not supply the industrial centers with foodstuffs unless the cities would guarantee, in turn, to provide the rural districts with manufactured products, and this, under the existing conditions, they were unable to do.

THE INAUGURATION OF NEP (1921).

Production fell off alarmingly and the communistic basis of industry had to be modified. In 1921 the government decided to restore private management of industry and private trading to a limited extent. This new economic policy (commonly known as NEP) permitted individuals and groups of individuals to own and operate workshops and factories, especially small establishments, on the stipulation that the government be given a share in the ownership. It allowed shops and stores to be opened under government license. It even invited foreign capitalists to come and manufacture or trade in Russia under concessions. Here was a curious intermingling of state and private capitalism. The Bolshevik leaders frankly admitted that communism had been applied on too extensive a scale and that there was no al-

ternative but a partial restoration of private enterprise until the industrial life of the country could be stabilized. Thereafter, it was hoped, communism would once more spread itself over the whole field of industry, by easy stages.

Under the spur of the new economic policy both agriculture and industry revived. Farmers began to rent land and to employ hired laborers. This class of employer-farmers (*kulaks*) rapidly increased. Industrial production went forward into higher figures. But the Communist leaders became alarmed at the inroads which capitalism seemed to be making and decided upon a reversal of policy. The "Nep-men" and *kulaks* were chastised in various ways, and in 1928 the first Five Year Plan was announced as a substitute for the earlier way of doing things. This plan contemplated the entire replacement of *kulak* farming by collective agriculture and the stimulation of Soviet industry to a point which would make the U.S.S.R. industrialized, mechanized, and independent of virtually all foreign products by 1933.

RESULTS OF THE CHANGE.

Considerable progress in both these directions was accomplished during the five-year interval, particularly with respect to the upbuilding of the heavy industries and the production of oil, but the goal was not completely reached. Accordingly a second Five Year Plan for all branches of the national economy, including not only agriculture and industry, but transportation, finance, and education was inaugurated in 1933.[1] During the past ten years the reorganization of individual farms into state farms and collective farms has been relentlessly pushed forward. Today it is claimed that over eighty-five per cent of all the former individual holdings have been collectivized.

THE FIVE YEAR PLANS.

This work is being done under a Charter for Agriculture which was issued in 1930 and revised in 1935. It provides for a plan of collectivization which is voluntary in form but reinforced by a good deal of official compulsion. In each agricultural community the peasant farmers are encouraged to form an "Artel" or coöperative agricultural association. To this association the peasant turns over his farm land, farm buildings, agricultural machinery, draft animals, his stock of seed, and his labor. All these become socialized into a collective farm project On the other hand he keeps his house and garden, all ani-

THE SYSTEM OF COLLECTIVE FARMING

[1] A detailed account is given in W. P. Coates and Z. K. Coates, *The Second Five-Year Plan* (London, 1934).

mals not used for work, poultry, and minor implements. These remain his "personal property."

Anyone who has attained the age of eighteen is eligible for membership in an Artel, provided he does not belong to one of the disfranchised classes Each member, on being admitted, pays an entrance fee which is returned to him if he ever leaves the association; but his land, when once socialized into an Artel, can never again be taken back into individual ownership.

MEMBERSHIP IN THE ARTELS.

The Artel is governed by a "town meeting" of its members and its affairs are administered by a council which is elected each year at one of these meetings. The council decides what shall be produced from the land and apportions the work. The products are delivered to certain state marketing organizations established for this purpose and at the end of the year each member of the Artel gets his share of the proceeds. To keep him going in the meantime he may draw from the Artel (in goods or money) not exceeding fifty per cent of his estimated earnings. All the Artels are federated into a general union which keeps them supplied with machinery, implements, goods, and money. These advances are paid for when the annual accounting is made. The council of the Artel also regulates the distribution of wages and has charge of certain common funds, including those which have been set aside for the support of the aged members or for members who have become otherwise incapacitated.

HOW AN ARTEL IS GOVERNED.

While the system is voluntary in form the Soviet authorities have actively encouraged it in ways which leave the peasants very little choice. For example, the tax system greatly favors the property of those who are members of an Artel, whether this property is in the socialized category or retained by the peasant himself. Peasants who have not come into the collectivist system are loaded with a discriminatory tax burden, and in the case of the more well-to-do farmers (*kulaks*) this burden is so heavy that even without forcible dispossession they would have been virtually eliminated altogether. Quotas of production for each collective farm have been set up, moreover, and anything above this quota becomes the property of the Artel members, to be sold on the open market for whatever it may bring, rather than turned over to a government agency at fixed prices.

VOLUNTARY IN FORM, BUT COMPULSORY IN FACT

Under the system of collective farming the total grain production in Russia has been greatly increased during the past nine years. In 1928 the total grain production was about 70,000,000 metric tons; in 1930 it had passed 80,000,000; by 1934 it had risen to almost 90,000,000. Governmental encouragement has been principally given to grain production because surplus grain can be readily exported and it is from such exports that the Russian government has hoped to get funds for the purchase of essential imports. The falling price of grain in the world market during the years 1929–1933 frustrated this expectation to a considerable extent, for the increase in grain exports did not produce a corresponding rise in payments from abroad.

ITS RESULTS.

Foreign trade in Russia is a state monopoly. All imports and exports are controlled by the Commissariat of Foreign Trade. No goods can be brought into Russia or shipped out except with the approval of this commissariat This includes all goods used in state enterprises or by the state-controlled organizations such as coöperatives and collective farms. The purpose of this arrangement is not only to ensure a favorable trade balance but to safeguard Soviet state industries against the competition of goods from the "capitalist" countries.

FOREIGN TRADE.

During the past ten years Russia has been in the throes of an industrial revolution comparable to that which transformed Great Britain a hundred and fifty years ago. It is officially claimed that the industrial production of the Soviet Union is seven times what it was before the war and that the number of workers employed in factories has more than tripled. The Communist authorities have done their utmost to stimulate industry, but in so doing they have inevitably promoted a large migration from the rural districts into the towns and cities. Before the war only twenty per cent of the people lived in urban communities; today the proportion has been almost doubled.

THE INDUSTRIAL REVOLUTION.

Most industrial enterprises in the Soviet Union are on a large scale, employing thousands of workers. They continue to be owned by the state and are operated by public trusts under the supervision of the various commissariats. During the early stages of the first Five Year Plan considerable numbers of technical experts were enlisted (in some cases from abroad) to help with the rapid upbuilding of the industries. But they were not given freedom from interference at the hands of party com-

AND INDUSTRIAL POLICY.

missars, and when their work failed to meet expectations these experts were sometimes branded as enemies of the state. In 1931, however, the government changed its policy in this respect and in recent years has given the managerial workers more freedom as well as larger privileges. They are no longer ruthlessly prosecuted for technical errors. The Soviet authorities have learned that the effective management of a great industry demands something more than simple loyalty to the Communist faith. They have also learned, apparently, that the complete elimination of individually owned property is impracticable.

All industrial labor is employed by the state, either directly or through the operating trusts. There is no bargaining between the worker and these publicly controlled industries. Rates of remuneration and conditions of work are fixed by the authorities. And they are not fixed on a uniform basis. The old Marxist principle of having every worker rewarded "according to his needs" has been replaced by a system of rewarding him "according to his work," which is quite a different thing. In fact the distinction between socialist production on a wages-according-to-work basis, and capitalistic production as commonly understood, is not a very fundamental one so far as the worker's remuneration is concerned. The main difference is in the ownership of the shop or factory where the worker is employed, not in the share of the product that he receives. In Russia, however, work is not optional. Labor offices are maintained by the government and workers are registered at the office nearest their homes. Whenever labor is needed, these lists are called upon. Those who are assigned to any job must take it at the wage-rate prescribed. There are organizations known as trade unions, but they are not organized by trades. Only one union is recognized in any factory; all workers must belong to it and cannot join any other.

LABOR RELATIONS

Every factory or shop in Russia has a committee of union workers and this committee sends one or more delegates to the district, regional, and All-Union congresses of trade unions No strikes or lockouts are permitted. Disputes are settled in accordance with a prescribed adjustment procedure. There is virtually no unemployment in Russia because the development of industry under government stimulus has absorbed the available labor supply. On the other hand there cannot be a serious shortage of workers in any branch of industry because no

THE UNEMPLOYMENT PROBLEM.

unemployed person may refuse, except on grounds of physical disability, any job offered to him through a labor office. If he is sent to a pick-and-shovel job he must take it, no matter what his training may have been. Foreign observers have also voiced the suspicion that the unemployment problem has been partly solved by encouraging the use of labor instead of machinery and by placing two or three workers on a job which would be handled by a single worker in other countries. There has been, however, a good deal of "political unemployment" in Russia, that is, the lack of employment for all who were in any way connected with the old régime or who have otherwise incurred the displeasure of the Communist authorities. Under the new constitution the legal discriminations against these people have been removed.

CHECKS ON THE BUREAUCRACY.

An immense amount of governmental administrative work has been necessitated by this state control of industry and labor. For a time it seemed as though the whole system might break down through the complexity and frequent inefficiency of the controlling bureaucratic authorities. To guard against this, however, there was first established a Commissariat of Workers' and Peasants' Inspection, which was superseded by the Soviet Control Committee in 1934. This committee is appointed by the Communist party congress on recommendation of its organization bureau. Its duty is to examine and simplify the administrative mechanism wherever it can, also to arrange for proper coordination among the various authorities and to iron out the rough spots in the whole system. The committee likewise has the function of recommending the demotion, dismissal, or prosecution of officials who seem to be lax or inefficient

SOVIET PUBLIC FINANCE

COMMUNIST FINANCE: THE GOSBANK.

The key position in the financial system of Russia is occupied by the state bank (Gosbank) which controls the issue of paper money and is the sole purveyor of short-term credits. It operates through a head office in Moscow and regional offices in all the more important Russian cities. Every enterprise and institution must keep an account with this bank and clear their transactions with one another through it. Thus the Gosbank has become a huge accounting concern which adjusts the debits and credits for the vast range of state-controlled enterprises. Soviet paper money is inconvertible, but in

this respect it is by no means unique among national currencies.

There is also a state savings bank which functions like savings banks in capitalist countries except that all its funds are automatically invested in government bonds. No money is loaned by this bank to any private concern or individual. Under the new constitution the people are encouraged to save part of their incomes and deposit the money in this institution. There are likewise some special banks which provide long-term loans for house building, for local public works, and for the various cooperatives. But since the government furnishes the funds and controls the enterprises, it is obvious that the work of these banks can be concerned with little more than the mechanics of accounting.

OTHER BANKS.

The budget means more in Russia than in other countries. It includes far more than the ordinary public revenues and expenditures. At least three quarters of the country's total capital expenditures are financed out of the budget, principally through the agency of the banks above mentioned The whole income and outgo of state-conducted industries are in many cases passed through the national budget—all of which gives the figures a sort of astronomical magnitude. Most of the government's revenue is derived from two sources: from the profits from state enterprises, and from taxation. The former include gains from the operation of the railroads, the post office, telegraph and telephone lines, banks and other credit institutions, and the vast array of state-operated industries. Taxation includes all sorts of levies. There are customs duties, taxes on business and on agriculture, income taxes, excess profits taxes, and special taxes for various designated purposes. Government ownership has sometimes been advocated as one means of reducing taxes. It has not done so in Russia. Funds for capital expenditures are obtained by the Soviet government by borrowing from the state savings bank and from all other credit institutions which have funds to spare.[1]

THE BUDGET SYSTEM

THE SUPPRESSION OF CIVIC RIGHTS

Terrorism by secret police, arrests without warrant, imprisonment without trial, and a general violation of civic rights,—such things were by no means uncommon in Czarist Russia. Liberals and revo-

[1] For a full discussion see W. B. Reddaway, *The Russian Financial System* (London, 1935), and L. E. Hubbard, *Soviet Money and Finance* (London, 1936).

lutionaries declared that they would put an end to all such abominations when they came into power, but when the Bolsheviks obtained control of the government in 1918 one of their first acts was to provide a system of secret police under a new name. The commission in charge of repressive police activities became known as the Cheka. Under its uncontrolled and ruthless power no man's life or liberties were safe. Arbitrary imprisonment and execution, with an utter disregard for the necessity of substantial evidence, became the order of the day. In 1922 the Cheka was abolished, but a new organization known as the OGPU immediately took its place. This, in turn, was abolished a few years ago (1934), and its functions handed over to the regular Union commissariat of internal affairs. It is the duty of this commissariat to safeguard the results of the revolution by suppressing counter-revolutionary activities, which is another way of saying that it puts its iron heel on anything which the government does not approve. The constitution of 1936 provides that the "inviolability of the person" is guaranteed and that "no one may be subject to arrest except on order of the court or with the sanction of a state attorney." But these guarantees have not yet availed to prevent arbitrary arrests, secret trials, and hushed-up executions.

THE CHEKA AND THE OGPU.

During the years immediately following the Russian Revolution the refusal to permit any degree of personal liberty was commonly defended as a necessary but temporary measure to safeguard the new régime from counter-revolutionaries. When the Soviet system became firmly established, it was said, the toleration of free speech and a free press would be practicable. So far as criticism of the government or of the Communist party is concerned, there has yet been no relaxation of the stringent rules, despite the bill of rights which is contained in the new constitution. But as respects the shortcomings of the economic system there has been a good deal of concession to the principle of free speech. Under the formula of "constructive self-criticism" the newspapers and the workers have been permitted and even encouraged to lay bare any abuses which they find. Some years ago, when the American anarchist, Emma Goldman, visited Russia she complained to the Communist leaders about the absence of freedom which she found in the country. "Freedom of speech, and freedom of the press,—these are capitalistic institutions which have no place in a proletarian dictatorship," they replied. But they are embodied,

PERSONAL LIBERTY.

plainly and without qualification, in the new All-Union constitution.

Rigid control of the press and the radio continues in the U.S.S.R. despite these constitutional guarantees, and no public meetings can be held without official authorization. Wonder is sometimes expressed that the Russian people tolerate this stifling of personal liberty, but it should be remembered that it is no new thing among them. Prior to the Revolution there was very little personal liberty in Russia so far as the masses of the people were concerned. Workers and peasants do not miss something that they never had. With respect to freedom of religious worship, however, the situation is different and the people have resented, as far as they have dared, the government's hostility to the churches. The new constitution now guarantees freedom of religious worship and also "freedom of anti-religious propaganda," but it says nothing about pro-religious activities.

THE PRESS.

Russian commentators on the new constitution have taken care to point out that the various rights and liberties guaranteed by this document are to be enjoyed only by loyal supporters of the Communist régime and do not extend to monarchists, reactionaries, or counter-revolutionists. The new constitution, in Stalin's words, is "a *socialist* constitution based on principles of extensive socialist democracy." It is not the intention to permit, by the granting of individual liberties, any change in the actualities of proletarian dictatorship or in the supremacy of the Communist party. "There can be no rights or liberties for those whose aim is the weakening of the socialist order." There is no room for a "loyal opposition" in the Soviet Union, even under the new organic law.

WHAT THE NEW BILL OF RIGHTS REALLY MEANS.

SOVIET FOREIGN POLICY

In the years immediately following the Revolution it was the policy of the Soviet government to do what it could in the way of promoting trouble with the capitalistic states. During this interval, of course, the Bolsheviks had provocation in that their country was subjected to a virtual economic boycott by its neighbors. In the course of time, however, this line of action was tacitly abandoned and the government began to seek both recognition and trade agreements with other countries. In this quest the Soviet authorities were only moderately successful, because they were

THE SHIFTS IN POLICY

not deemed to be acting in good faith. After 1931, however, the Communist leaders became alarmed by the growth of Hitlerism in Germany, with its virulent attacks upon communism everywhere and its predictions of an inevitable Russo-German war. The U.S.S.R. therefore turned with a friendly gesture to France and concluded a treaty of non-aggression with the French Republic in 1932. Later, in 1935, the two countries signed a more comprehensive pact of mutual assistance, supplemented by negotiations for military coöperation which are still going on. These may materialize into something similar to the cordiality which existed between the two countries prior to the World War. Meanwhile the Soviet authorities have strained their relations with Italy and Germany by actively supporting the loyalists against the insurgents in the Spanish civil war.

THE U.S.S.R. AND THE LEAGUE OF NATIONS.

The Soviet attitude towards the League of Nations has also undergone a marked change during the past half dozen years. At the outset the Soviet authorities declined to have anything to do with the League, regarding it as a capitalist superstate. Gradually, however, they began to take an informal part in League conferences and eventually became full-fledged participants. The Soviet Union entered the League of Nations in September, 1934, and since that time has loyally supported it. Soviet influence in the League has been directed towards the maintenance of the territorial *status quo*, the placing of emphasis upon the unity of European peace, and the encouragement of regional pacts for mutual assistance.

THE U.S.S.R. AND JAPAN.

In the Far East there has been for many years a serious conflict of interests between the U.S.S.R. and Japan. Relations between the two countries have become strained from time to time but various concessions, usually on the part of the Soviet Union, have prevented an open rupture. Japanese penetration of Manchuria has seemed to involve a potential menace to the Russian province of Eastern Siberia in that it brings the Mikado's forces within striking distance of the Trans-Siberian railway. On the other hand the Japanese look upon the Russian terminal base at Vladivostok as an even greater potential menace to Japan. For this Russian air-base is only about six hours flying distance from Japan's great industrial cities which are, for the most part, of tinderbox construction. They could be set on fire and ruined in a very short time by any hostile power having control of the air, and Vladivostok is the only place on which such control is likely to be

based. In their dealings with Japan the Soviet authorities have displayed a spirit of great conciliation; meanwhile, by the construction of military motor roads in Eastern Siberia, by the double tracking of the Trans-Siberian railroad, by the building of munition factories there, and by the development of great air bases they are preparing to defend their territorial integrity against Japanese aggression if need be.

THE THIRD INTERNATIONAL.

In the discussion of Russian affairs one frequently hears reference to the Third International. What is this organization? It is a world association of Communists. Its beginnings go back to Karl Marx, who founded in 1864 an international association of socialist workingmen which became known as the First International. His idea was to promote the socialist cause by bringing together, in one great federation, the socialist comrades of all nationalities. But this organization encountered internal dissension, partly because it supported the abortive Communist risings in Paris during the Franco-Prussian war, and it was formally dissolved in 1876. Thirteen years later a Second International was formed and it was still in existence when the World War began. During the war it broke up, but in 1919 it was reconstructed by the more conservative labor and socialist groups. The radical groups, however, would not come back into the organization. Instead they convened at Moscow and created the Third International under the aegis of the Russian Communist party. It now represents, or claims to represent, the Communist parties and organizations throughout the world.

ITS STATUS AND ACTIVITIES.

The Third International (Commintern) held its seventh and most recent meeting in Moscow during 1935. Stalin was one of the delegates of the Communist party at this gathering. The Russian delegation constituted a minority but exercised a dominating influence over its deliberations. Between the Commintern and the Soviet government there is claimed to be no official connection. Various high officers of the Russian government serve as delegates, to be sure, but they do so as representatives of the Communist party, not as Soviet officials. The Russian government has consistently disclaimed responsibility for any phase of the Commintern's program and especially for its propagandist activities in other countries, including the United States In a purely technical sense this disclaimer may be justified, for it is the Communist party in Russia (not the Soviet government) which sub-

sidizes and supports the propagandist work of the Third International. But the two are so closely identified that no real distinction can be made between them.

THE GREAT ENIGMA AMONG THE NATIONS.

A prodigious amount has been written about the Soviet Union and its affairs during the past twenty years The Moscow government has published no end of statistics and other data, while foreign observers have given us books by the dozen. Yet Russia remains a great enigma among the nations. The state industries are reported in one official announcement to have exceeded their quotas of production; a few days later we learn that hundreds of factory managers have been ousted and penalized for failing to achieve these quotas. The Red army is officially praised as a thoroughly unified force, absolutely loyal to the Communist cause; then comes an announcement that various high officers in its supreme command have been executed for disloyalty. A constitution is promulgated with a forthright stipulation that the trial of all offenses shall be public; yet the official organs of the government continue to tell the world about groups of workers who have been "liquidated" for sabotage without any semblance of a public trial. And in a social order which is declared to be free from all class antagonism one reads official reports of pacemakers in the speed-up factories being murdered or beaten by resentful fellow-workers.

As a matter of fact it is well-nigh impossible for anyone to present a trustworthy picture of the political structure, the economic situation, the public policies, and the national morale of the U.S.S.R. at any given time. This is because the territory is so vast that what is true in one portion of it may be wholly untrue in others. It is also because things are continually in transition, in a state of flux, moving from one policy or objective to another. One must also remember that the "general line" to which the Communist party leaders profess strict adherence is a very sinuous one, with endless twists and turns. In fact it is little more than whatever these leaders desire it to be. No free, uncensored descriptions of Russian affairs, by those who know the inside story, ever see the light of day. No foreign visitor, personally conducted around the country under official supervision, is in a position to ascertain the truth. Hence the most conflicting accounts of conditions in this vast land are spread before the rest of the world. Obviously they cannot all be true, and one is sometimes tempted to doubt whether any of them are.

Writers have been fond of comparing the Russian Revolution of the twentieth century with the French Revolution of the eighteenth. There are some striking similarities,—and also some notable contrasts. Both were uprisings against a despotism which had become honeycombed with inefficiency and corruption. Both began in the capital city by storming the prison, ousting the government, and placing the monarch under surveillance. In both revolutions he was later put to death. In both countries the revolution became more radical as it ran its earlier course, and then reacted in its later stages. As in France the power passed from Mirabeau to Danton, from Danton to Robespierre, and back to the more conservative hands of Bonaparte, so in Russia it went from Kerensky to Lenin and Trotsky, then to Stalin, the chief author of the new Soviet constitution. Both revolutions inaugurated a Red Terror for the upper classes, abolished the state church, harried the nobility out of the country, gave the land to the peasants, and issued floods of paper currency until the country fairly wallowed in it.

THE FRENCH AND RUSSIAN REVOLUTIONS COMPARED:

1. THE SIMILARITIES.

But the French Revolution came when France was at peace and had been for six years. In Russia the revolution occurred in the middle of a world war, with the country badly exhausted. The revolution took France into a war; it took Russia out of one. Economic conditions, moreover, were widely different in the two great upheavals. France, in 1789, had only one large city. Outside Paris there was no industrial population in the modern sense. The only proletariat in France at that time (other than in Paris) was the peasantry. But Russia, in 1917, had many industrial cities which had become dependent upon the rural districts for food and for the raw materials of industry. France, in 1789, had no system of railroad transportation; one section of the country was not dependent on the rest In Russia, on the other hand, the economic system had become (to a degree at least) based upon the facilities for transport, and these broke down.

2. THE CONTRASTS.

Finally, and most important, the leaders of the French Revolution had no clear ideas as to what they wanted in the way of economic reconstruction. They had no Marxist philosophy to serve as their guide. Hence they did not try to change the existing economic system from top to bottom by shifting it to a strictly communist basis. The French Revolution was chiefly directed against the privileged orders

—the nobility, the ecclesiastical hierarchy, the rich and powerful. The Russian Revolution did not rest content with striking at these groups but went after the bourgeoisie as well. That is why writers speak of the French Revolution as a great political movement, but designate the Russian Revolution as a social and economic overturn.

It is as yet too early to determine whether the world will find much similarity between these two great upheavals in their later stages.

THE FUTURE.

The French Revolution, like the Russian, gained many sympathizers in other countries. And it held their admiration so long as revolutionary zeal was directed against the abuses of the old régime. But when Danton went to the guillotine, and when Robespierre followed him,—when the revolutionaries began cutting one another's heads off,—then the ranks of foreign admirers began to dwindle. In France the great upheaval of 1789 ultimately threw the destinies of the people into the hands of a Bonaparte who reversed the engines and sent the ship of state full speed astern. He restored the church, reëstablished the nobility, and set up in France a government more highly centralized than that of the Bourbons had ever been. From the outbreak of the French Revolution to the height of the reaction an interval of at least twenty years elapsed.

It remains to be seen whether Russia, as time goes on, will pass through a similar experience. Is the constitution of 1936 to be even measurably administered in accordance with the spirit which its provisions imply? Or is it, as the skeptics declare, merely a bit of decorative window dressing, designed to facilitate the work of Soviet propagandists abroad? Can the distinction between personal property and private property be maintained, or will the one gradually expand into the other? What would be the effect of a war, especially if Russia (compelled to fight on three fronts, west, south, and east) should prove to be the loser? Can the masses of the people, to whom civil rights have been granted on paper, be indefinitely restrained from transforming these rights into realities? It is easier to ask such questions than to answer them.

Russian Communism. In addition to the books listed at the close of the preceding chapter special mention should be made of Sidney and Beatrice Webb, *Soviet Communism: A New Civilization?* (2 vols., New York, 1936), a comprehensive survey with pro-Communist leanings. Other well-known sources of information are H. Popov, *Outline History of the Commu[illegible] Party of*

the Soviet Union (New York, 1934), the articles on "Communism" and on "Communist Parties" in the *Encyclopaedia of the Social Sciences*, Vol. IV, pp. 81–95, P. Malevsky-Malevitch, editor, *The Soviet Union Today* (New York, 1936), P. Sloan, *Soviet Democracy* (London, 1937), A. R. Williams, *The Soviets* (New York, 1937), T. B. Brameld, *A Philosophic Approach to Communism* (Chicago, 1933), H. J. Laski, *Communism* (New York, 1927), W. H. Chamberlin, *Russia's Iron Age* (Boston, 1934), and W. Gurian, *Bolshevism: Theory and Practice* (London, 1932).

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OTHER TOPICS. H. J. Laski, *Law and Justice in Soviet Russia* (London, 1935), M. S. Calcott, *Russian Justice* (New York, 1935), S. N. Harper, *Civic Training in Soviet Russia* (Chicago, 1929), A. P. Pinkevitch, *Science and Education in the U. S. S. R.* (London, 1935), J. Hecker, *Religion under the Soviets* (New York, 1927), L. Fischer, *The Soviets in World Affairs* (2 vols., New York, 1930), Kathryn W. Davis, *The Soviets at Geneva* (Geneva, 1934), and S. N. Harper, editor, *The Soviet Union and World Problems* (Chicago, 1935).

BIOGRAPHICAL. G. V. Vernadsky, *Lenin, Red Dictator* (New Haven, 1931), Léon Trotsky, *My Life* (New York, 1930), and I. D. Levine, *Stalin* (New York, 1931).

The *Handbook of the Soviet Union*, published under the auspices of the American-Russian Chamber of Commerce (New York, 1936), contains much valuable data.

CHAPTER XLII

THE LESSER GOVERNMENTS

Whatever crushes individuality is despotism, by whatever name it may be called.—*John Stuart Mill.*

REAL VALUES IN GOVERNMENT.

The major governments of Europe are not in all cases the most successful ones. They are not necessarily the ones which have the greatest assurance of being permanent. Two factors combine to determine, in very large measure, not only the character of a government but the extent to which it will prove workable and enduring. One of these factors is geography; the other is race. A nation's security against attack, with the consequent overthrow of its government, has always been to some extent a matter of geography. England and Switzerland, one with her fringe of ocean and the other with her cordon of mountains, afford obvious examples. Natural resources have an influence in determining whether a country can become relatively self-sufficient and free from dependence upon its neighbors. Political absorption has sometimes been the outcome of economic necessities. And as for the relation between racial traits and the achievements of government it is beyond question that some races of men have a greater genius for politics than others. The history of nations is full of evidence to support that proposition, although there is no race which does not look upon itself as politically gifted.

GEOGRAPHY AND TRADITIONS.

The difficulty of maintaining a combination of orderly and progressive government in any country is determined not only by considerations of geography and race but by its own historical traditions. Governments everywhere are to a large extent in bondage to the past When certain political ideals become stamped upon the public imagination it becomes essential that both the structure and the methods of government shall be adapted to fit these stereotypes, which are usually embalmed in national slogans. Other things being equal, a small country is less difficult to govern than a large and populous one. Hence the study of comparative government can profit by including

within its scope a brief review of the way in which some of the less-important countries of Europe are endeavoring to provide themselves with rulership.

SOME STRIKING FEATURES OF THE LESSER GOVERNMENTS.

In selecting a few lesser countries for this purpose one naturally thinks of Switzerland, one of the oldest, smallest, and best of the world's democracies. With its plural executive, its unique interpretation of the principle of ministerial responsibility, and its free use of direct legislation the Helvetic Republic has illuminated both the science and the art of government. The Scandinavian kingdoms are also worth a glance from the student of comparative government because they show the system of limited monarchy functioning at its best. Poland likewise deserves some attention, particularly because of the quite unusual procedure which the new constitution of that country provides for the nomination and election of the chief executive. And Czechoslovakia is distinctive for the stability with which it has conducted its affairs during a period when neighboring governments have been toppling over. Likewise its constitutional court is a unique feature. Finally, Yugoslavia deserves inclusion because of its reversion to the old system of open voting and other unusual features in its electoral system.

1. SWITZERLAND

A TRUE DEMOCRACY.

Switzerland is in many ways the most interesting of these lesser political entities. "Among the modern democracies which are true democracies," Lord Bryce once said, "the Helvetic Republic has the highest claim to be studied. It contains a greater variety of institutions based on democratic principles than any other country. . . . The most interesting lesson Switzerland teaches is how traditions and institutions, taken together, may develop in the average man, to an extent never reached before, the qualities which make a good citizen—shrewdness, moderation, common sense and a sense of duty to the community. It is because this has come to pass in Switzerland that democracy is there more truly democratic than in any other country in the world."[1]

Switzerland has about one third the area of New York state, and about one third the population. She is thus one of the smallest

[1] *Modern Democracies* (2 vols., New York, 1921), Vol. I, p. 327.

among European nations, wedged in between three of the largest and most powerful—France, Germany, and Italy. Her people live on both sides of a great mountain chain, having spread themselves over the plateaus above and through the valleys below. Three races, speaking three languages, have been so squeezed together by powerful neighbors that they have grown into one. The Swiss people have no national language. Most of them speak German, but in some parts of the country French and Italian are the languages of the majority. Nor is there any uniformity of religious belief. Protestants dominate a majority of the cantons while the Catholics outnumber them in the rest. On the face of things, therefore, the Helvetic Republic lacks most of the cohesive forces which are commonly said to make for national solidarity—those which arise from community of race, language, and religion. Nevertheless, and in spite of all this, these four million Swiss form a thoroughly coherent nation. They have behind them a tradition of self-government extending back six hundred years or more.

THE LAND OF THE SWISS.

The Helvetic Republic is a confederation of twenty-five cantons.[1] There is a federal constitution, adopted in 1848 and considerably revised in 1874, which cannot be amended except by majority vote of the people and a majority of the cantons.[2] Like the Constitution of the United States this constitution is a grant of powers and the allocation of governmental powers between the federal and cantonal governments is roughly similar to that in the United States. The federal government has control of foreign relations, but the constitution provides that the cantons (with the federal government's approval) may make certain agreements with foreign countries. The federal government has an exclusive right to send and receive diplomatic agents, to declare war and make peace, and to conclude treaties of an important nature. The Swiss military system, based upon universal training, is under its control. The federal government has control of the postal system; it operates the Swiss railroads (with a few minor exceptions) as well as the tele-

THE SWISS FEDERAL CONSTITUTION:

ITS DIVISION OF POWERS.

[1] More accurately there are nineteen cantons and six half-cantons. The latter have cantonal governments of their own, but each has only one representative in the federal council, whereas the other cantons have two representatives.

[2] An English translation is printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part I, pp. 19–54.

graph and telephone services. It has charge of the currency and has the exclusive right to issue paper money. It has control of banking; and has power to regulate commerce including the power to levy customs duties, but it has no right to lay direct taxes upon the people. If it needs more revenue than it can obtain from indirect sources the federal government may levy upon the cantons in proportion to their wealth and taxable resources. It controls all available water powers, and has a monopoly in two fields of production, namely, explosives and alcohol. These are its exclusive powers.

In addition the Swiss federal government has various concurrent powers, that is, powers which it exercises in common with the cantons. Among these are powers relating to the regulation of industry and insurance, the construction and upkeep of highways, the control of the press, and the encouragement of education. When the federal government exercises a concurrent power, its laws prevail over those of a canton.

THE SWISS FEDERAL PARLIAMENT:

1. THE UPPER CHAMBER OR COUNCIL OF STATES.

The Swiss federal government consists of a legislature, an executive, and a judiciary. The federal legislature is divided into two chambers known as the council of states and the national council. The council of states seems at first glance to be an almost exact replica of the American Senate, for it contains two members from each regular canton and one from each half-canton—forty-four members in all. But the resemblance is only superficial. In the United States the senators are elected by the people of the forty-eight states for six-year terms; in Switzerland the members of the upper chamber are chosen in such manner and for such terms as each canton may decide. In some they are elected by the people of the canton, in others by the cantonal legislature. The terms vary from one to four years. The two upper chambers, Swiss and American, are also quite unlike in their respective powers. The Senate of the United States has some highly important special prerogatives—the confirmation of appointments, the ratification of treaties, and the hearing of impeachments. The Swiss council of states has no special powers of any sort. Ostensibly it has exactly the same legislative authority as the lower chamber but in actual practice its share in lawmaking is considerably less important.

The lower chamber, or national council, is composed of about two

hundred members elected from the various cantons under a system of proportional representation.[1] An election takes place every fourth year. Nominations are made by the various political parties, each of which presents a full or partial list of candidates in every canton. Or, as very often happens, a mixed (*panaché*) list is made up containing candidates from more than one party. Manhood suffrage is the rule. Every male Swiss citizen who has completed his twentieth year is entitled to vote, and any voter who is not a clergyman can be a candidate.[2] Woman suffrage has not been granted in Switzerland and has never been a national issue there.

2. THE LOWER CHAMBER, OR NATIONAL COUNCIL.

The Swiss national council holds two regular sessions a year and occasionally meets for a third time in special session. The sessions are short, rarely exceeding four weeks. The council chooses its own presiding officer and he has the usual powers. Members may speak in German, French, or Italian—and they do. You will hear them all in a single debate. This gives rise to no serious practical difficulties because every educated Swiss knows at least two languages and often three or four. German, French, and Italian are recognized as official languages, hence most public documents are printed in all three versions, which is a source of considerable expense.

ITS METHODS OF WORK.

The process of lawmaking in Switzerland deserves a word for it presents some significant features. Every bill is introduced simultaneously in both chambers. This differs, of course, from the practice in other countries, but it has the merit of ensuring that a bill will have independent consideration by two groups of legislators. In the United States, if a bill originates in the House of Representatives, and is killed in committee, it never gets before the Senate at all. Or, if introduced in the Senate, and rejected there, it does not reach the House calendar. In Switzerland a bill may be under discussion in both chambers on the same day.

FEATURES IN PROCEDURE:

1. THE SIMULTANEOUS INTRODUCTION OF BILLS IN BOTH CHAMBERS.

Any member of either Swiss chamber may introduce a bill, but most of the important measures are brought in by the ministry (fed-

[1] There are a few cantons which have only one representative and in these, of course, there is no proportional representation.

[2] A Protestant clergyman may become eligible, however, by resigning from the ministry.

eral council). They have been carefully framed before the opening of the session. Either chamber, moreover, may by resolution request the ministers to prepare a bill on any specified subject, and this is not infrequently done. Bills of the type known as private bills and private members' bills in England, or as local bills in the United States, are relatively few. This is largely because the Swiss have made ample provision for taking care of this ancillary legislation by means of executive decrees (*Verordnungen*).

2. DOMINATING INFLUENCE OF THE FEDERAL COUNCIL.

The two Swiss chambers do a good deal of their work through committees on each of which all the political parties are represented. All questions on the agenda are first referred to them. When a committee reaches a decision it appoints a reporter (as in France) to make the report. If the committee is badly split, and a minority report seems to be in order, an additional reporter is named to present that side of the case. As a matter of fact, however, bills presented by the federal council are not often rejected or seriously modified by a legislative committee. The executive branch of the government in Switzerland guides the legislative branch as effectively as in Great Britain, perhaps even more so.

3. COMMITTEE WORK.

If either of the legislative chambers rejects a measure, or passes it with amendments, a conference is held between representatives of the two bodies and an agreement is usually obtained in this way. Although the powers of the two houses are ostensibly equal, the upper chamber does not often stand out against the will of the lower house. At times the council of states has insisted on defeating measures which the national council has favored, but such action is becoming less common. The Swiss council of states does not possess the power or prestige in lawmaking that the American Senate commands. On the other hand it is more influential than the Senate of the French Republic. Unlike most upper chambers, moreover, it has not acquired a reputation for conservatism. No one ever speaks of the Swiss council of states as a citadel of reaction or a brake upon the wheels of progress.

4. LEGISLATIVE DISAGREEMENTS.

The executive in Swiss government is unique. Virtually all other countries have single executives—a king, emperor, president, Fuehrer, or "head of the government," as the case may be. Switzerland has a plural executive which consists of a federal council, or ministry of seven members, elected

THE SWISS COLLEGIAL EXECUTIVE.

by the two legislative chambers in joint session.[1] The choice is made immediately after each general election. They hold office for four years unless the lower chamber is dissolved in the meantime. In that case a new election is held when the legislature reconvenes. The constitution does not require that members of the two chambers shall choose the federal ministers from their own ranks, but in practice this is usually done. On being chosen, the federal councillors vacate their seats in the legislative chambers and special elections are then held to fill the vacancies. Reëlections to the federal council are common, and when a councillor is once elected he ordinarily remains in office as long as he desires.[2] This permanence of tenure distinguishes the Swiss federal council from all other European ministries.

THE PRESIDENT OF THE CONFEDERATION.

Every year the two legislative chambers, in joint session, elect one member of the federal council to be chairman of that body with the title President of the Swiss Confederation. But apart from presiding at meetings of the federal council and giving the casting vote in case of a tie, he has no constitutional powers of any importance. He does not appoint officials, or veto bills, or carry on diplomatic negotiations. He is merely the titular head of the confederation and represents it on occasions of ceremony. But by custom he has become a sort of general overseer, responsible for inspecting the work of the various administrative departments, and the federal council may authorize him to act in its name. This is sometimes done in emergencies, but no act that the President performs in this capacity is valid until approved by the council. He is in no sense a prime minister; therefore, he does not select his colleagues, and has no authority over them. His legal powers are virtually the same as those of the other councillors although he sits at the head of the table.

THE VICE PRESIDENT.

The two chambers also elect one of the federal councillors to be Vice President of the Confederation. He presides when the President is absent and as a rule he is promoted to the presidency in the following year. The constitution does not permit a retiring President to succeed himself, or to be elected Vice President, neither does it permit a Vice President to be reëlected. Thus it virtually compels rotation. On the other hand it

[1] Not more than one member can be chosen from a single canton. By usage three of the largest cantons, Berne, Zürich, and Vaud, are always represented in the federal council.

[2] During the period 1848–1937 there have been only fifty-six federal councillors.

does not preclude a second term if at least one year intervenes. Hence a minister who remains long enough as a member of the federal council is likely to have a second, or even a third, presidential term.

THE FEDERAL COUNCIL AS A MINISTRY.

What are the functions of the federal council as chief executive of the Swiss Republic? They are not wholly executive in their nature, but legislative and judicial as well. The Swiss government is not constructed, like the American, on the principle of separation of powers. The federal council is a ministry in that it serves as the executive committee of the Swiss parliament. It is controlled by the latter and must obey all resolutions passed by the two chambers. If the councillors find themselves outvoted on any matter they do not resign, as in France or England; they merely pocket their pride and obey the will of the legislative bodies with as good grace as they can muster. The Swiss see no reason why ministers, whose general work is satisfactory, should be turned out of office because they and the chambers are of a different opinion on some single proposition.

THE SWISS THEORY OF RESPONSIBILITY.

FUNCTIONS OF THE FEDERAL COUNCIL:

1. EXECUTIVE.

As the supreme executive authority of the confederation the Swiss federal council conducts foreign affairs, promulgates the laws, controls the army, and appoints all federal officers other than those who are chosen by the two chambers in joint session. It prepares each year the federal budget of estimated receipts and proposed expenditures. This budget is then laid before the chambers by the federal councillor or minister who is in charge of the department of finance. It is explained and defended on the floor by him. After the budget has been voted by the two chambers, the federal council assumes the duty of collecting the revenues and supervising the expenditures. The council also presents an annual report giving an account of its work in both foreign and domestic affairs, and this report is carefully gone over by the legislative chambers.

2. LEGISLATIVE.

The members of the federal council also have important legislative functions. They prepare bills for consideration by the two chambers, sometimes in compliance with specific requests made by the latter. These requests are made by resolutions known as "postulates." All measures are prepared by experts in bill-drafting who are regularly employed for this purpose. On the other hand, when bills are introduced by private members of

either chamber they are referred to the appropriate member of the federal council for his opinion before being acted upon. Thus no measure is ever enacted by the Swiss parliament without its being first considered by someone in the executive branch of the government.

This does not mean, of course, that the members of the federal council have a veto upon legislation. They sometimes present, at the request of the chambers, bills that do not meet their own approval, and bills of this type have occasionally been passed. The federal council or council of ministers, in a word, is expected to participate actively in the lawmaking process but not to feel hurt if its advice is disregarded. As someone has said, the Swiss federal councillor is like a lawyer or an architect in that his advice is sought and usually heeded; but he is not supposed to throw up his job when his employer insists on having something done differently. Although they cannot be members of either chamber, the federal councillors have a right to appear on the floor at any time and take part in the debate. They use this privilege freely and to good purpose.

3. JUDICIAL.

Finally, the Swiss federal council has some powers of a judicial nature. Originally it decided controversies on points of constitutional law and also served as the chief administrative court of the confederation, but many years ago the federal courts took over its jurisdiction in constitutional cases. It still retains some jurisdiction in cases arising under administrative law, although it has now surrendered most of this authority. A constitutional amendment in 1914 authorized the creation of a federal court of administrative justice. After a long delay, however, it was decided not to establish such a court but to give its proposed functions to the *Bundesgericht* or regular supreme court. The latter body, accordingly, now deals with complaints made by individuals against the actions of the public authorities.

THE COUNCIL AS A CABINET.

Like the ministries of other countries the Swiss federal council has both collective and individual functions. It holds regular meetings; its sessions are secret, and decisions are reached by majority vote.[1] The President has a vote on all questions and when the council is deadlocked he has an addi-

[1] By a constitutional amendment (adopted in 1931) a chancery or secretariat was established to serve the federal council. It is headed by a chancellor who is chosen by the two legislative chambers in joint session. He functions also as head of the civil service.

tional vote. But the Swiss federal council is not really a cabinet in the common acceptation of the term. The term cabinet implies a degree of party solidarity which the Swiss council does not possess. Its members are not drawn from a single political party and are not necessarily united on any political program. They are not chosen to carry out party pledges or to serve the interest of a party, as is the case with members of the cabinet in Great Britain and in the United States.

INDIVIDUAL WORK OF THE COUNCILLORS.

In addition to its collective functions the federal council has work which its members perform individually. Each of the seven councillors, including the President and the Vice President, is the head of an administrative department. These seven departments represent the usual division of administrative work as one would expect to find it in a small country. Their designations are: (1) political (including foreign affairs), (2) finance and customs, (3) justice and police, (4) interior, (5) military affairs, (6) posts and railways, and (7) public economy (i.e., agriculture, industry, commerce, and labor). The "political" department includes not only foreign affairs but naturalization, federal election laws, emigration, and some other matters. Each department is divided into bureaus or services. In these the work is done by members of the Swiss civil service which is now organized under a general law defining its status and privileges.[1]

THE SWISS JUDICIARY.

Turning to the judicial system of Switzerland, not much need be said. There is only one federal court—the *Bundesgericht*, it is called. It consists of twenty-four judges (and nine substitute judges) elected for a six-year term by the two legislative chambers in joint session. But the practice is to re-elect these judges on the expiry of their terms so that they virtually hold office as long as they desire it. The court sits in three sections. It has original jurisdiction in controversies arising between the confederation and the cantons, and in some other cases. It has appellate jurisdiction in cases which come up from the cantonal courts. And, as has been said, it now functions as an administrative court. But in the matter of ultimate judicial supremacy the Swiss federal tribunal

DECLARING LAWS UNCONSTITUTIONAL.

or supreme court differs from the American. It may nullify a cantonal law if it finds the same to be in conflict with the federal constitution or with federal laws, but it has no authority to declare a federal law uncon-

[1] A copy of this law (June 20, 1927) may be found in Leonard D. White, editor, *Civil Service in the Modern State* (Chicago, 1930), pp. 363–382.

stitutional. On the contrary the Swiss constitution expressly declares that "the court shall apply laws voted by the federal assembly."[1] This fact is of some significance because it is often contended by American lawyers that no federal constitution, with a division of powers, can ever prove workable unless some supreme tribunal is given power to keep both the states and the federal government within their own bounds. Swiss experience does not show this contention to be valid under all circumstances.

THE INITIATIVE AND REFERENDUM.

Switzerland is the ancestral home of the initiative and referendum. In one form or another these institutions of democracy have been used by the Swiss cantons for a very long time, and it is from Switzerland that they have spread, along the major routes of democratic infection, to various other countries including the United States. They are perhaps the most remarkable among all the institutions that democracy has produced, for they afford a means of lawmaking without the intervention of a legislative body, in other words a channel of direct action by the people. Nothing in the Swiss political system is more instructive to the student of modern democracy.

A DEFINITION OF THE TERMS.

The initiative is an arrangement whereby a specified number of voters may prepare the draft of a law and may then demand that it either be adopted by the legislature or referred to the people for acceptance at a general or special election. If approved by the required majority it then becomes a law. The referendum is a device whereby any law which has been enacted by the legislature may be withheld from going into force until it has been submitted to the people and has been accepted by them at the polls. Thus the two agencies supplement each other; the intent of the one is positive—to secure the enactment of some measure which the legislative body has ignored or declined to pass; the intent of the other is negative—to provide a popular veto upon something which the legislature wants but which the people do not. As a rule the initiative and referendum go together, but they need not be conjoined, for either can exist alone.[2]

[1] Article 113.

[2] The present status of the initiative and referendum in Switzerland may be summarized as follows: *The Initiative* is used (a) in all the cantons except Geneva for the revision or amendment of the cantonal constitution; (b) in all the cantons except Lucerne, Valais, and Fribourg for the proposing of new laws; (c) in the confederation for proposing constitutional amendments (but not for proposing laws). *The Referendum* is used (a) in all the cantons on amendments to the can-

All the stock objections to the initiative and referendum have been in part verified, and in part disproved, by Swiss experience. People vote on questions which they do not understand. The peasant often goes to the polls and marks his ballot on some complicated question without any comprehension of what it is all about. Regional prejudice and partisan bias decide the issues in some cases. The system involves expense and puts the people to inconvenience. On the other hand it has been a useful instrument of public education, and has developed among the people a lively interest in political affairs. Swiss patriotism has been stimulated by a sense of popular responsibility. Direct legislation, moreover, has provided the Swiss people with a check upon legislative ineptitude which otherwise would be lacking, for there is no executive veto in Switzerland as in America. In any event the great majority of the Swiss people appear to be satisfied with their system of direct legislation and there is no likelihood that they will abandon it. A careful American student of the matter has given his opinion that the advantages in Switzerland far outweigh the defects.[1]

THE VARIED LESSONS OF SWISS EXPERIENCE.

As for local government, each Swiss canton has its own constitution and its own frame of government. A few are of the *Landesgemeinde* type, that is, they are governed by what Americans would call an enlarged town meeting. A general assembly of all the adult male citizens in the canton is called once a year to decide important matters of cantonal policy. This meeting also elects a small council of five members which, like the board of selectmen in a New England town, functions through the year and performs such duties as the general assembly assigns to it. But most of the cantons are not of this type. They have no general assembly of the citizens. Instead the voters elect a great council, as it is called. This council meets frequently and serves as a cantonal legislature subject, of course, to the use of the initiative and referendum.

LOCAL GOVERNMENT.

tonal constitution, (b) in all of them except Fribourg for the adoption of ordinary laws; (c) in the confederation for the adoption of constitutional amendments proposed by the federal legislature, and (d) in the confederation for ordinary laws where duly invoked by petition. But some of the cantons have the *obligatory* referendum, that is, all laws passed by the cantonal council must be submitted to the people, while others have the *optional* referendum, in other words a measure is not submitted unless a prescribed number of voters petition for such action.

[1] R. C. Brooks, *Civic Training in Switzerland: a Study of Democratic Life* (Chicago, 1930).

The people of these cantons also elect an administrative council, usually of five or seven members, and this body serves as the local executive. Within the cantons are the cities, towns, and villages which are known as communes no matter what their size. In the smaller communes the town-meeting type of local government prevails; but in the larger ones the people elect municipal councils.

THE COMMUNES.

There are several political parties in Switzerland, of which the more important are the Radical Democratic, Social Democratic, Catholic Conservative, and a Farmers and Workers' party. The first-named is a progressive, middle-class party, with well-established traditions, and not so radical as its name would imply. The Social Democrats profess Marxian allegiance although, like similar parties in Scandinavia and elsewhere, they are not affiliated with the Third International. The Catholic Conservatives comprise two groups, one inclining to conservatism and the other to Christian socialist principles. The party group which represents the farmers and workers is an offshoot from the Radical Democratic party, but more conservative and especially interested in tariff protection for industry and agriculture. No single group possesses a majority in the Swiss parliament.

POLITICAL PARTIES.

2. THE SCANDINAVIAN KINGDOMS

Next to Switzerland, in point of interest for the student of democracy, come the three Scandinavian kingdoms Sweden, Norway, and Denmark. Until 1905 the first two were united but in that year the union was dissolved by mutual consent. In each of the three countries the king is the executive head of the government, but all official actions of the crown are taken on the advice of a cabinet, headed by a prime minister. This cabinet is in each case responsible to the national parliament. The executive branch of the governments in all three Scandinavian countries is roughly modelled upon that of Great Britain.

THE MINISTERIAL SYSTEM.

Sweden, the largest and most populous of the Scandinavian realms, has had a long and interesting political history. Students of European history will recall the important rôle which Sweden played in the stirring drama of European politics during the reign of Gustavus Adolphus in the seventeenth century. The present royal family descends from Bernadotte, one of Napoleon's marshals who was chosen

SWEDEN: HISTORICAL BACKGROUND.

to the throne as Charles XIV in 1818. There is a formal constitution, dating from a few years earlier, but it has been greatly supplemented by law and custom during the past century or more. For her parliament Sweden originally had a body of four "estates" or four chambers representing the clergy, the nobility, the townsmen, and the peasantry. Each sat separately and taxes could not be voted unless all four of them concurred. This was too cumbrous an arrangement for modern legislative needs, so in 1866 the four estates were reduced to two.

THE SWEDISH PARLIAMENT.

The Swedish parliament or Riksdag now consists of two chambers, both elected— one indirectly and the other directly—by the people. The first chamber or upper House is composed of about 150 members who are chosen for eight-year terms by the provincial assemblies or *Landstings*. The latter are made up of assemblymen elected by the people in accordance with a system of proportional representation One eighth of the members of the Swedish upper House finish their terms each year. The second chamber or lower House is a larger body. It has about 230 members all of whom are directly elected by the people for four-year terms. Universal suffrage is established in Sweden, but the minimum voting age is twenty-four years for voters of both sexes. The country is divided into constituencies, each of which elects several members of the lower House on a proportional representation basis.[1] The plan used is the one known as the d'Hondt system, which is rather complicated for explanation here. The result in Sweden, as elsewhere, has been to encourage the formation of multiple party-groups and in the present Riksdag there are six or seven of them ranging all the way from Conservatives to Communists.

POWERS OF THE TWO CHAMBERS.

The two chambers have substantially the same constitutional powers and the ministry is equally responsible to both. This arrangement might seem to be unworkable but it has not proven so in Sweden because the same coalition of party-groups is usually able to command a majority in both chambers. Moreover, if the two houses fail to agree on any important measure the ministry can have them called into a joint session where a majority decides the issue. The Social Democrats in

[1] For an explanation of the different schemes of proportional representation used in European elections (Hare system, d'Hondt plan, Hagenbach-Bischoff formula, etc.) see A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), chap. v, or, for a more extended discussion, C. G. Hoag and G. H. Hallett, *Proportional Representation* (New York, 1926).

Sweden have been in recent years the strongest of the various party-groups and ministerial coalitions have used them as a basis. Changes of ministry in Sweden are more frequent than in England, but there is no such incessant in-and-out procession of cabinets as in France. An interesting feature of Swedish parliamentary procedure is that all committees are joint committees, each chamber being represented by a definite quota of members. This arrangement strengthens the influence of the committees both in parliament and with the ministers.

NORWAY.

The Norwegian parliament is, *ab initio*, a single body, known as the Storthing. Its members are chosen by direct popular vote with universal suffrage and proportional representation. Then, after the election, the assembly divides itself into two unequal chambers, one containing a fourth of the membership and the other three fourths. A few special matters, such as impeachment, are exclusively given to one chamber. Bills are discussed and passed by each house separately but in case of disagreement the two meet in joint session and the issue is settled by a two thirds vote.

DENMARK.

In Denmark the lower chamber is directly elected by universal suffrage but with the voting age fixed at twenty-five years or over. A system of proportional representation is used. Members of the upper chamber are chosen in two ways—first, a certain quota is elected by the outgoing members at the close of their term, and, second, a larger group is elected by popular vote with the minimum voting age fixed at thirty-five.

PARTIES.

Political parties in all the Scandinavian countries are numerous. But this party decentralization has not led to ministerial instability. The reason is that one party usually manages to secure a sufficiently large representation to facilitate a coalition which can be held together. Socialists or Social Democrats are strong in all three countries, but their programs embody a rather mild type of socialism,—in tune with the Second (not the Third) International. Their platforms are not more radical than that of the Labor Party in Great Britain.

3. POLAND

The new Polish Republic is made up of territories wrested by treaty from three great pre-war empires · Austria, Germany, and Russia. Down to the last quarter of the eighteenth century, as everyone

knows, Poland was an independent monarchy with that strangest of all executive headships, an elective king. In the old Polish parliament, moreover, there was a rule that nothing could be done, no tax levied, no law enacted, save by unanimous consent. Every member of the parliament had an absolute veto. He had merely to rise and say, "I object," whereupon a proposal could go no further. He could even compel a dissolution of the parliament by declining to attend its session. This absurd system engendered political stagnation, while the elective kingship, with its recurrent contested or indecisive elections, invited civil war and foreign aggression. The political history of Poland in the seventeenth and eighteenth centuries is replete with lessons to the student of modern government.

EARLY HISTORY AND GOVERNMENT.

Poland had the misfortune to possess strong and avaricious neighbors. Frederick the Great of Prussia was particularly envious because some Polish territory which reached to the Baltic at Danzig intersected his own Prussian provinces. Austria and Russia were also casting lustful eyes upon the fertile Polish acres which lay contiguous to them. At any rate these three powers joined their forces and in 1772 accomplished the first partition of the country. Poland was considerably reduced in size; her elective kingship became hereditary, and the *veto liberum* was abolished. A second partition followed in 1793 and two years later the last remnants of the old monarchy were divided up. Poland, as an independent state, disappeared from the map. During the next hundred years there were nationalist revolutions which attempted to regain for the people their right of self-determination, but in every case they were put down and the tripartite domination of Poland by alien powers continued until the World War.

THE VARIOUS PARTITIONS OF THE COUNTRY.

Proposals for the restoration of Poland were made from allied quarters during the course of the struggle, and after America's entry into the war this restoration was included by President Wilson in his famous statement of aims, commonly known as the Fourteen Points. The victory of the allied and associated powers ensured the consummation of this design and in the settlements which followed the close of the war the territories which now form the Polish Republic were consolidated. Meanwhile, on the collapse of the German and Austrian armies, a constituent assembly was called, and in due course a republican constitution was framed. The new Poland is made up of territories

THE POST-WAR RESTORATION.

covering about the same area as California, with a population of about twenty-eight millions.

The Polish Republic adopted a constitution in 1921, with provision for a government modelled closely upon that of France. But this government did not acquire sufficient stability to deal energetically with the difficult problems which faced the new republic and in due course Marshal Pilsudski, the Polish war hero, took control of the government by a *coup d'état* (1926). For a time he endeavored to manage affairs under the existing constitution, but in the end found himself forced to secure a majority in parliament by the use of repressive measures. Finally, in 1935, his followers put through a new constitution.

THE CONSTITUTION OF 1935.

Under this new constitution the chief executive power in Poland is vested in a president who is chosen by popular vote for a seven-year term. But the method of nominating candidates for this office is a unique one and can be used to nullify popular participation in the choice. First of all an electoral commission is created by the Polish parliament. This commission consists of twenty-five members selected by the upper chamber and fifty by the lower, together with five high public officials. It nominates one candidate and the retiring president of the republic has the right to nominate another. The voters then choose between these two nominees at a general election. But if the retiring president fails to make a nomination the candidate of the electoral commission takes office without an election. And that is what is likely to happen under a quasi-dictatorship.

THE POLISH PRESIDENT.

The president is advised by a ministry which is chosen by himself. But he may act in various important matters on his own prerogative, without the necessity of ministerial approval. The ministry may be dismissed by the president at any time. If the two chambers of the Polish parliament agree in demanding the resignation of the ministry, or of an individual minister, the president must either see that the request is complied with, or, as an alternative, he can dissolve the parliament and order a new election But the two chambers do not often agree and it has become possible for the president to concentrate nearly the whole range of governmental powers into his own hands. He can issue, on his own authority, decrees having the force of law.

THE MINISTRY.

In the Polish parliament the upper House is composed of two ele-

ments. One third of the members are appointed by the president of Poland; the remaining two thirds are chosen by electoral collegiums the members of which are elected by a very limited category of voters. There are seventeen districts and an equal number of electoral colleges. To qualify as a voter in these elections one must be at least thirty years of age. The lower House, on the other hand, is made up of 208 deputies who are elected by secret ballot and universal suffrage, with the age limit for voting set at twenty-four years. Each of 104 districts is entitled to elect two deputies, but their choice is restricted to a list of four who are nominated in each district by an electoral committee.[1] The deputies serve for a five-year term unless a dissolution of parliament intervenes. All proposals of legislation must originate either in the cabinet or in the Sejm or lower House, and the assent of the latter is necessary for the enactment of all laws. The Senate may amend or reject any measure, although the lower House can then override its action by a three fifths vote. But a large part of the lawmaking during recent years has been by executive decree. While political parties still exist in Poland, several of them, they are not permitted, as such, to have representatives in parliament.

THE SENATE.

THE SEJM.

4. CZECHOSLOVAKIA

Czechoslovakia includes the ancient kingdom of Bohemia, with the territories of Moravia, Silesia, and Slovakia. Prior to the war Slovakia was part of Hungary; the others were within the old Austrian empire. This new republic is a landlocked peninsula about six hundred miles in length, thrust westward into the heart of Europe. It has about fifteen million people within its borders; its total area roughly approximates that of New York State. While Czechs and Slovaks constitute a large majority of the population, there are about three and a half million Sudeten-Germans, most of whom inhabit a border belt in the northwest part of the country. The independence of the Czechoslovak Republic was proclaimed during the toppling days that marked the close of the war in 1918, and a provisional constitution was put into force about a month later.

THE CZECHOSLOVAK REPUBLIC.

[1] The electoral committee is made up of delegates from municipalities, chambers of commerce, labor federations, and other organizations.

This provisional document was supplanted by a permanent constitution in 1920.

The Czechoslovakian constitution of 1920 owes much to the French system of national government. It provides for a president, elected for a seven-year term by the two chambers of parliament in joint session. Election on either of the first two ballots requires a three fifths vote, but if no candidate can muster that degree of strength a majority suffices to elect on the third ballot. From 1920 to his resignation in 1935 the eminent scholar and statesman, Thomas G. Masaryk, served as president, having been twice reëlected. He was succeeded in 1935 by his protégé, Edward Beneš.[1] The president of Czechoslovakia acts on the advice of a ministry which is responsible to parliament. Like the President of the United States he may veto legislation, but his veto power is a suspensive one only, for it can be overriden by a bare majority in both chambers or by a three fifths vote in the lower chamber alone.

THE PRESIDENT.

Both chambers of the Czechoslovakian parliament are directly elected by the people. Universal suffrage is in vogue. But there are two different electorates. All persons over twenty-one years of age are entitled to vote for members of the lower House, while the suffrage in the case of elections for the upper House is narrowed to persons who have reached the age of twenty-six. Elections are conducted in accordance with a system of proportional representation by which the voters express their choice for parties, not for individual candidates. One result of this has been to encourage the multiplication of political parties, of which there are now fourteen or fifteen in all. In the present lower House of 300 members (elected in 1935) the strongest party-group has only forty-five representatives, while no fewer than six other parties have twenty or more seats. The result is that Czechoslovakian ministries are always of a composite character and are dominated by a committee of party leaders representing the several groups within the coalition. The power of life and death over Czechoslovakian cabinets has thus passed into the hands of a managerial ring known as the Petka which is made up of party-group leaders or bosses who have no legal status but who meet regularly in secret and agree upon governmental policies which the ministry must carry out or lose office.

PARLIAMENT.

THE PETKA.

[1] Pronounced *Benesch.*

The constitution of Czechoslovakia provides that both chambers of parliament have an equal share in lawmaking except in the case of the budget and army bills which must originate in the lower House. But if the upper House rejects any measure that has been passed by the lower chamber the latter can make its will effective by an absolute majority of all its members. The interpellation procedure is used, as in France, but with limitations which make it much less of a threat to ministerial stability. No debate follows the answer to an interpellation unless a majority of the members vote to have one.

PROCEDURE.

An interesting feature of the Czechoslovakian governmental system is the tribunal known as the constitutional court. This special court is made up of seven judges, of whom three are appointed by the president of the republic while the remaining four are chosen, two each, from the regular supreme court of Czechoslovakia and from the supreme administrative court. Its sole function is to pass on the constitutionality of laws, but to declare a national law unconstitutional it is required that at least five of the judges shall concur in the decision. Although provision was made for this court more than seventeen years ago it has never been called into session or given any cases to decide. This is partly because the constitution provides that an issue of constitutionality cannot be raised by private parties but only by the public authorities.

THE CONSTITUTIONAL COURT.

The absorption of Austria by the German Reich in 1938 involved the virtual encirclement of Czechoslovakia by her powerful neighbor. It raised in an acute form the problem of granting autonomy to the Sudeten-German minority. The government of Czechoslovakia made large concessions along this line but it may be doubted whether they will prove adequate to prevent the German Reich from ultimately repeating its Austrian venture by annexing Czechoslovakia in whole or in part. For protection against such a move Czechoslovakia has looked to France, but one cannot be certain that such assistance would prove adequate at a critical juncture.

FOREIGN RELATIONS.

5. YUGOSLAVIA

Unlike Czechoslovakia, the kingdom of Yugoslavia is only in part a succession state. Yugoslavia is the old Serbian monarchy, nearly trebled in size. For a time it was officially known as the kingdom of

the Serbs, Croats, and Slovenes, but in 1929 the name was changed to the kingdom of Yugoslavia. Serbia was for a long time under the control of Turkey, but like the other Balkan States achieved its independence (1878). Outside her own boundaries, however, there remained large Yugoslav elements, especially in Austria and Hungary, and it was the hope of the Serbian leaders that these might by some means be federated with herself into a Greater Serbia. This nationalist aspiration was the taproot of the ill-feeling between Belgrade and Vienna, for it could never be brought to fulfillment without a disruption of the existing Hapsburg empire.

THE KINGDOM OF THE SERBS, CROATS AND SLOVENES.

The allied victory gave the Yugoslavs their opportunity, and soon after the armistice they merged into a unified kingdom under a new name. When various boundary disputes had been settled, and after Montenegro had been added to the new state, the kingdom adopted a constitution in 1921. This was framed, as in other succession states, by an elective assembly. The kingdom of Yugoslavia has a population of about twelve millions, and an area somewhat larger than that of Kansas.

Yugoslavia is a limited monarchical state with a constitution which was adopted in 1931. Provision is made for a ministry to advise the king, but this ministry is ostensibly responsible to the king alone. During the minority of the monarch the powers of the crown are being exercised by a committee of three regents. The parliament consists of two houses, a Senate and a Chamber of Deputies. Half the total number of senators are chosen by a very limited electorate and the other half nominated by the crown. Members of the lower House are elected on a basis of manhood suffrage, but the voting is oral and public. The secret ballot is never used. It is also provided that each voter shall indicate his choice for a party list, not for individual candidates. The party which obtains a plurality of votes is entitled to two thirds of the seats, the remaining seats being distributed proportionally among the minority groups. This, it will be noted, is the plan which was established in Italy in 1923 but later abolished.

THE PRESENT SYSTEM OF GOVERNMENT.

All the old political parties have been eliminated in Yugoslavia and the constitution forbids their revival in any form. It provides that new parties may not be formed on any regional, racial, or religious basis. But various new political parties have come into existence, although the govern-

POLITICAL PARTIES ABOLISHED.

ment party, known as the Yugoslav Radical Union, has full control of the chamber. As the voting at elections is both oral and public the government has no reason to be afraid of losing this control.

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1. SWITZERLAND. The most recent book on Swiss government is W. E. Rappard, *Government of Switzerland* (New York, 1936), but there is much good material in R. C. Brooks, *The Government and Politics of Switzerland* (New York, 1918), and in the same author's *Civic Training in Switzerland: a Study of Democratic Life* (Chicago, 1930). Abundant bibliographical references may be found in these books. In Lord Bryce's great study of *Modern Democracies* (2 vols., New York, 1921) there is a hundred-page survey of the Swiss political system with many illuminating observations.

2. THE SCANDINAVIAN KINGDOMS. Political history is outlined in R. N. Bain, *Scandinavia: A Political History of Denmark, Norway and Sweden* (Cambridge, England, 1905). E. C. Bellquist, *The Development of Parliamentary Government in Sweden* (Berkeley, California, 1932), is a careful study, and M. W. Childs, *Sweden, The Middle Way* (New Haven, 1936) explains the workings of Swedish democracy. Mention should also be made of H. L. Brackstad, *The Constitution of the Kingdom of Norway* (London, 1905), and F. C. Howe, *Denmark: A Coöperative Commonwealth* (New York, 1922).

3. POLAND. R. Machray, *Poland, 1914–1931* (London, 1931), R. Landau, *Pilsudski and Poland* (New York, 1929), R. Dyboski, *Poland* (Modern World Series, London, 1933), and S. Karski, *Poland, Past and Present* (New York, 1934).

4. CZECHOSLOVAKIA. T. G. Masaryk, *The Making of a State* (New York, 1927), J. Hoetzel and V. Joachim, *The Constitution of the Czechoslovak Republic* (Prague, 1920), and J. Chmelar, *Political Parties in Czechoslovakia* (Prague, 1926).

5. YUGOSLAVIA. C. A. Beard and G. Radin, *The Balkan Pivot. Yugoslavia; A Study in Government and Administration* (New York, 1929), K. S. Patton, *The Kingdom of the Serbs, Croats and Slovenes* (Washington, 1928), and A. Mousset, *Le royaume Serbe-Croate-Slovène; son organisation, sa vie politique, et ses institutions* (Paris, 1926).

CHAPTER XLIII

THE GOVERNMENT OF JAPAN

Every nation must live upon the lines of its own experience. Nations are no more capable of borrowing experience than individuals are.—*Woodrow Wilson.*

In a book on European governments for American readers it may seem irrelevant to include, even as a supplement, a brief description of the structure and functions of government in Japan. Yet the government of Japan is in a sense European, for many of its principal features were borrowed from Europe. It may be interesting to see how they have developed in the new environment. One of the great political scientists of a generation ago, in the quotation which stands at the head of this chapter, declared that no nation can successfully borrow the experience of others. But Japan has done it—to a considerable extent. Her scheme of national government derives from Great Britain through Prussia, her system of local government from France, and her industrial technique from the United States. Her banking system was imported from England and her jurisprudence harks back to the civil law of Rome. Among the political institutions of Japan very few are native born. Manhood suffrage, ministerial responsibility, a privy council, political parties, a bicameral parliament with a House of Peers, the secret ballot, prefects and mayors, national law codes, trial by jury, and administrative courts—none of these are indigenous to Japan. All of them, and many other features of Japanese public life have been borrowed from the experience of foreign lands.

A WORD OF EXPLANATION.

There are other reasons why this government should be of interest to Americans. The Japanese are our most powerful trans-Pacific neighbors. When one takes Alaska and the Philippine Islands into account, they are also our nearest trans-Pacific neighbors. With them we have developed a large commercial intercourse and in many parts of the world they have become our keenest competitors for trade. All things considered, it is by no means improbable that the eyes of America will become more intently focussed on the Pacific area during the next generation. With the development of commercial air transport the

OUR INTEREST IN JAPAN.

rivalry between the two most powerful nations on either side of that ocean is likely to become more intense. Accordingly, it may not be amiss for young Americans to learn something about Japan's governmental organization and political ideals.

AREA, POPULATION, AND RESOURCES.

The Japanese empire consists of four principal and adjacent islands, together with the island of Formosa which was acquired from China in 1895, several smaller islands, the southern half of the island of Saghalien (obtained from Russia in 1905), and the peninsula of Korea or Chosen. In addition Japan holds the mandate for various Pacific islands which were surrendered by Germany at the close of the World War; she exercises a protectorate over Manchukuo (Manchuria), and she has some leased territory in China. Japan proper (the four principal islands) has an area roughly comparable to that of California. But her population is nearly 70,000,000 or almost twelve times that of California. Thus the density is not far from 400 persons per square mile, which is considerably higher than that of Connecticut, one of the most thickly-populated of the American commonwealths. Other territories under Japanese control (including Manchukuo and the leased areas in China) have a population of about thirty millions more. Mountains and other non-arable areas comprise a large portion of the four principal Japanese islands, and in consequence the people are not able to support themselves from the agricultural production of the land. The country, moreover, is very poorly endowed with natural resources; there is very little oil; the coal deposits are not of high quality, and what iron ore there is happens to be of low grade. That a country so poorly supplied with natural resources should have so quickly become a great industrial power is one of the miracles of modern civilization.

EARLY HISTORY.

The history of Japan as an empire goes back a long way. The Japanese claim that its origin dates from 660 B.C. and that their present emperor is a descendant of their first in unbroken line. In its early stages Japan was ruled by tribal chiefs, among whom the emperor was merely regarded as the dominant one, divinely appointed to be above the others. But in the course of time the emperor gained additional power, only to lose it again,—first to a civilian and subsequently to a feudal hierarchy. The head of this feudal autocracy was a generalissimo known as the shogun, whose position was first created by the emperor in the thirteenth century

THE SHOGUNATE.

and became hereditary. This official established his capital at a point remote from the emperor's court and virtually ruled the whole empire through his own military governors and through the feudal lords (daimyos).

AND THE GREAT TOKUGAWA SHOGUNS.

But he did it all in the emperor's name. His position was that of a hereditary regent, not merely during the emperor's minority but during his entire reign. While each successive shogun was formally invested with his office by the emperor, he ruled without consulting the latter. At the beginning of the seventeenth century the shogunate passed to members of the Tokugawa clan, who held it for more than two hundred and fifty years, with their capital at Yedo (now Tokyo) while the emperor had his capital at Kyoto. Great shoguns there were during the early part of the Tokugawa era, especially Ieyasu and his grandson Iyemitsu, whose achievements have been superbly memorialized in the great Temple of the Shoguns at Nikko visited without fail by every American tourist to Japan.

THE OLD COUNCILS.

The shoguns were assisted in their task of governing by two councils, one of elder statesmen and one of younger advisers. Members of the former held office for life and filled vacancies in their own ranks. They also appointed their junior associates. It was the function of the elder statesmen to prepare decrees for the shogun's signature, to serve as his ministers in carrying on the work of administration, and to supervise the feudal lords each of whom governed his own small domain. The members of the junior council assisted them in this work. Within each feudal fief the lord had his vassals or retainers (samurai), roughly corresponding to the knights in feudal Europe. Thus, although there was no historical connection between the two, European and Japanese feudalism developed along somewhat similar lines.

THE RESTORATION OF 1867–1868.

The old government of Japan came to an end in 1868. The change was accomplished by the Restoration, a virtually bloodless revolution in the course of which the ruling shogun abdicated and the ancient form of direct imperial government was restored. There were various reasons for the collapse, as there had been for the downfall of the old régime in France three quarters of a century earlier. The feudal government had become enervated and corrupt. But there was a special reason in Japan's case, the opening of the country to foreigners and foreign trade. The government of the shogunate had acceded to

foreign demands and had become unpopular with the Japanese people who believed that foreign intercourse was merely a prelude to foreign aggression. The moving spirits in the Restoration were the leaders of certain powerful clans in the southwestern part of the country who had been largely excluded by the shoguns from any share in government and who hoped to gain it under an imperial régime.

JAPANESE FEUDALISM ABOLISHED (1868).

Following the termination of the shogunate came the abolition of the entire feudal system. This was accomplished in an imperial rescript by which the ownership of the land was transferred from the feudal lords to the emperor. Most of the lords had assented to this transfer before it was officially decreed, being won over by promises of various compensations. Class privileges were also abolished, and the feudal knights (samurai) who had formerly been forbidden to engage in business were now conceded this privilege. And for the first time all Japanese were made equal before the law. This did not, however, imply the permanent erasing of the nobility. In due course the former feudal lords, as well as the older civilian nobles, were given hereditary titles after the European fashion—marquis, count, baron, and so forth.

THE CONSTITUTION OF 1889

THE TRANSITION ERA (1868–1889)

When the emperor assumed the reins of government after the Restoration he promised that a parliament would be established in Japan "and all measures of government decided in accordance with the will of the people." For the time being, however, the old councils of the shogunate era were retained in slightly altered form. A little later they were replaced by three new bodies,—a privy council, a senate, and a supreme court. All three were composed of appointive members, and these members were drawn, in the main, from the clans which had successfully promoted the Restoration. But this "clan government" engendered a great deal of criticism and in due course there developed a movement for the introduction of a parliamentary system. To meet this demand the emperor promised, in 1881, that a constitution would be granted and an elective parliament established as soon as a thorough study of the country's political needs and capacities could be completed. Meanwhile the councils in the districts, cities, and villages were placed on an elective basis.

Instead of calling a constitutional convention to prepare the new

constitution, the emperor appointed his prime minister, Marquis Ito, to do the work.[1] This competent statesman had already made a careful study of American and European governments. To assist him in his task of constitution-making he now enlisted the services of three Japanese experts and the first draft of the new document was made by them under the prime minister's supervision. Then it was laid before the privy council and carefully considered at secret sessions with the emperor presiding. After various changes had been made by the council the constitution was promulgated in 1889 by imperial decree. It was not made public for discussion by the people before being issued to them, nor was it submitted to anyone for ratification. But an elaborate commentary on the new constitution, explaining its various provisions, was simultaneously issued for the information of the public.[2]

HOW THE WORK OF PREPARING A CONSTITUTION WAS DONE.

The Japanese constitution of 1889 is a concise document, occupying fewer printed pages than does the Constitution of the United States. In addition to a preamble it has only 76 articles, arranged in seven chapters.[3] But this is because the Japanese constitution does not form the entire organic law of the empire. It is supplemented by various imperial ordinances, dealing with such matters as the succession to the throne, the peerage, elections, and finance, all of which were promulgated simultaneously with the constitution itself. Taking this whole group of documents together they form a very elaborate basis of government. And most of the ideas embodied in them were bor-

GENERAL CHARACTER OF THE DOCUMENT.

[1] It should be remembered, however, that as early as 1876 a formal commission had been appointed to draft a constitution and in 1880 had submitted a complete project to the emperor. It was not adopted but along with various other schemes and memorials of the same period it formed a basis which Ito and his colleagues later utilized. See the article on "The Japanese Constitution" by Kenneth Colegrove in the *American Political Science Review*, Vol. XXXI, pp. 1027–1049 (December, 1937).

[2] This volume, entitled *Commentaries on the Constitution of the Empire of Japan*, has frequently been likened to *The Federalist* which was written by Alexander Hamilton, James Madison, and John Jay as a means of getting the American constitution ratified in the several states. As the Marquis Ito and one of his expert helpers (Baron Kaneko) were familiar with American constitutional history, it is by no means improbable that they had the precedent of *The Federalist* in mind. An English translation of Ito's *Commentaries* may be found in any good library.

[3] A French translation is given in F. R. and P. Dareste, *Les constitutions modernes* (4th edition, 5 vols., Paris, 1928–1933), Vol. V, pp. 551–582, and an English translation may be found in Harold S. Quigley, *Japanese Government and Politics* (New York, 1932), Appendix IV.

rowed from abroad. It is commonly said that Prime Minister Ito took Prussia as his model of national government, and that is doubtless true; but it is to be remembered that the Prussian constitution had in turn been modelled upon that of England. So what one might say is that Japan in 1889 equipped herself with a variant of the Prussian adaptation of the British political system. In any event one can hardly gainsay the statement that the Japanese political system of to-day bears a closer resemblance to the British than to the Prussian pattern. Nothing of any consequence, by the way, was copied by the framers of the Japanese constitution from the government of the United States.

HOW IT MAY BE AMENDED

The Japanese constitution, to use Gladstone's expression, was "struck off at a given time by the hand and brain of man," and bestowed upon the nation by imperial command. Amendments, therefore, can only be made on the initiative of the emperor, but the constitution provides that subsequent approval by a two thirds vote in both houses of parliament is also required. As a matter of fact the Japanese constitution has not had a single amendment added to it since 1889, but this does not mean that it has stood unchanged during these fifty years or thereabouts. Like the Constitution of the United States it has been altered and developed by interpretation, by statute, and by usage. It has been enlarged by the simple process of having the Japanese parliament enact laws which go beyond the words of the constitution; this being a safe procedure because no court in Japan can declare any law unconstitutional if it has been duly enacted by parliament and has received the emperor's assent. When, therefore, the Japanese decide to have things done in a different way from heretofore, they do not spend time in debating whether such action would be constitutional. They merely go on the principle that since the throne is the source of the constitution, any law to which it gives assent must be within the constitution. And in any event the Japanese constitution is couched in such general terms that it leaves plenty of room for statutory development. As respects the method of amendment, therefore, the written constitution of Japan and the unwritten constitution of Great Britain are on the same footing.

In the United States all questions of constitutional interpretation are decided by the regular courts and in the last analysis by the supreme court. In Japan both the ordinary and the administrative courts, each in their own field, have the function of interpreting the

provisions of the constitution so far as their bearing upon private individuals is concerned. They determine, for example, whether the constitution and the laws give or do not give an individual certain rights. But when disputes arise in Japan between two branches of the government (for example, concerning the respective powers of the two houses of parliament) the matter is settled by a decision of the privy council. No issue of this character, strange to say, has arisen during the past forty-five years. Let it be repeated, however, that neither the regular courts nor the administrative courts nor the privy council can declare any imperial law to be unconstitutional. They can interpret, but they cannot invalidate. This restriction upon the power of the courts, however, does not apply to the ordinances and decrees which are issued by the ministers or by their subordinates to carry out the provisions of the imperial laws. If an ordinance is at variance with either the constitution or the laws, it may be held invalid.

HOW QUESTIONS OF CONSTITUTIONAL INTERPRETATION ARE SETTLED.

THE EMPEROR AND HIS ADVISERS

Japan is a hereditary empire with the succession vested in the Yamato dynasty. It goes to male descendants of this line, according to the principle of primogeniture. No provision is made for female succession to the throne. But the detailed rules relating to the succession are not embodied in the constitution, which merely provides that the empire shall be reigned over and governed "by a line of emperors unbroken for ages eternal."[1] They are set forth in a separate document which was promulgated in 1889 as the Imperial House Law. This law cannot be altered by parliament The present Japanese emperor is Hirohito, grandson of the emperor Meiji who was restored to power in 1868.

THE EMPEROR.

In an earlier chapter of this book it was pointed out that the British philosophy of government makes a distinction between the powers of the king and the powers of the crown. The same is true in Japan but to a lesser degree. The emperor reigns but does not rule. There has been much controversy among Japanese constitutional jurists as to whether the emperor is *theoretically* an absolute monarch, and hence whether he could, if he so chose, revoke the con-

JAPANESE THEORIES AS TO THE NATURE OF THE EMPEROR'S AUTHORITY.

[1] The "unbroken" line of male descendants is sometimes maintained in Japan by the process of adoption. If a father has no sons he may (and usually does)

stitution and abolish the Japanese parliament. But these legal dialectics need hardly concern the student of political actualities. And the actualities of the situation are that short of a revolution or *coup d'état* the Japanese emperor could not resume the powers which he possessed prior to 1889. His position is that of a limited monarch, with limitations which are none the less effective by reason of the fact that they were originally self-imposed.

HIS PREROGATIVES AND THE REASON FOR THEIR EXTENT.

On the other hand the personal political discretion of the Japanese emperor is considerably greater than are the prerogatives of the British king. This is because the imperial advisers in Japan, unlike the royal advisers in Great Britain, do not constitute a single group. In the British system of government all official advice that is tendered to the throne must come from the ministry; in Japan it comes from several advising agencies. First, there is a ministry or cabinet, with a prime minister at its head, and on most questions of public policy the advice of this body must be followed. But in the second place there is the agency known as the "supreme command," a group of military and naval authorities, and the advice of this group is followed in matters relating to the national defense. Third, there is the privy council, a body quite distinct from the cabinet, which has various functions of an advisory nature in relation to the throne. Fourth, the emperor has an extra-constitutional source of advice in emergencies from the *genro*, as will be presently explained, and, finally, there is an imperial household ministry, a small group of palace officials who are the emperor's confidants and as such have a considerable influence upon his political views. Deriving advice from this variety of sources the Japanese emperor is able to exercise (in outward appearance at least) a much greater degree of personal discretion than is permitted to the British king.

THE CABINET.

The Japanese constitution, like the American, makes no provision for a cabinet. But it does provide for individual ministers. Likewise it declares that these ministers "shall give their advice to the emperor and be responsible for it." All laws, ordinances, and other imperial actions so far as they relate to "affairs of state" require the countersignature of a minister. There is a prime minister and twelve other ministers who together

adopt a nephew or other near male relative, who is then regarded as his own son for the purpose of perpetuating the family name. This process of adoption, however, is forbidden to the ruling dynasty by the Imperial House Law.

form the Japanese cabinet; they meet once a week or oftener; their discussions are secret, and they present an outward alignment of cabinet solidarity as in England. The twelve portfolios in the Japanese cabinet (one or more of which may be assumed by the prime minister) are foreign affairs, home affairs, overseas affairs, finance, war, navy, justice, agriculture, commerce, communications, railways, and education. Members of the cabinet do not need to have seats in either house of parliament as in Great Britain; on the other hand they are not debarred from being members of the legislative body as in the United States.

MINISTERIAL RESPONSIBILITY: ITS NATURE IN JAPAN.

The Japanese constitution likewise makes no mention of ministerial responsibility other than that the ministers shall be responsible for advice which they give to the emperor. But responsible to whom? To the emperor or to parliament? There are those who believe that the framers of the constitution were intentionally ambiguous on this point. But as a matter of practice the cabinet has recognized a considerable degree of responsibility to the representatives of the Japanese people in parliament, although this responsibility has not yet become so clear and direct as it has grown to be in Great Britain. An adverse vote in the Japanese House of Representatives does not necessarily mean the resignation of the ministry or a new election. On the other hand no ministry can function in Japan if it has to face, day in and day out, a hostile majority in the House. One might, perhaps, express the matter in this way: The Japanese ministry is responsible to the lower chamber of parliament in that the business of government cannot be carried on for any considerable length of time without a general measure of parliamentary coöperation; but it is not required to obtain parliamentary endorsement for every action of the government. And this must inevitably be the situation so long as the ministry is not the sole agency from which the emperor receives and accepts advice.[1]

THE "SUPREME COMMAND."

Mention has already been made of the fact that on questions relating to the national defense and warlike operations the emperor is not advised by his cabinet but by a group of military and naval agencies which includes the minister of war and the minister of the navy together with the chiefs of the general army and naval staffs. The minister of war is always an army

[1] In 1937 provision was made for the calling of an advisory ministerial council, with an enlarged membership, to consider important problems and policies.

officer of high rank, and the minister of the navy a high ranking officer in that branch of the service. No civilian has ever been regularly appointed to either post. And the two ministers just named are expected to function in a dual capacity. As regular members of the cabinet they take part in all its deliberations, even on purely civil matters, and help formulate the advice which is communicated to the emperor on behalf of the cabinet by the prime minister. But they also serve as members of the supreme command and in this capacity they tender advice to the emperor quite independently of the other ministers and indeed without the necessity of consulting them. This dualism, of course, leads to all sorts of trouble because the exact line of demarcation between the cabinet's jurisdiction and that of the supreme command is difficult to draw. An increase in armaments, for example, may be advised by the supreme command, but such an increase requires money and it is the cabinet's responsibility to get this money voted by parliament. Thus it may be placed in the position of having to urge expenditures which it does not approve.

WHY IT IS POWERFUL.

The military and naval authorities in Japan have a means whereby they can virtually compel any cabinet to meet their wishes or go out of office. No prime minister can form or maintain a cabinet without a minister of war and a minister of the navy. These, as has been pointed out, must be high-ranking officers in their respective branches of the service. But no such officer will accept or retain a post in any cabinet if it pursues a policy which is regarded by the army and navy chiefs as detrimental to the interests of the national defense. Accordingly a new prime minister must reach some understanding with the military and naval leaders before he can get his cabinet constituted, and he must continue to satisfy them in a general way, otherwise he will have two resignations with no one available to fill the vacancies.

SOME RESULTS OF IT.

This lack in complete subordination of the armed forces to the civil authorities is a feature which distinguishes the Japanese governmental system from the British, French, and American —indeed from virtually all other governments whether democratic or dictatorial. It has far-reaching implications, especially upon the conduct of foreign affairs. Movements of troops and war vessels are ordered by the supreme command in the name of the emperor without the necessity of obtaining approval from the minister of foreign affairs or even consulting him. Yet such movements may greatly hamper the foreign office in its negotiations.

Repeatedly, indeed, the world has seen the Japanese foreign office giving assurances of peaceful intent while the army and navy of Japan were acting in complete disregard of them.[1] Such a situation can hardly endure forever. It must ultimately be resolved by giving a clear primacy to one side or the other,—to the cabinet or to the supreme command.

THE PRIVY COUNCIL.

By reason of a similarity in names the privy council of Japan is often assumed to be a replica of the historic English body. And it is true that so far as their membership goes the two are somewhat alike. But the Japanese privy council is smaller in size and larger in powers. Members of the cabinet are ex officio members of this privy council during their tenure of office. Other members are appointed for life by the emperor on advice of the prime minister, who also nominates the president of the council. Most of the appointees are persons who have rendered notable service to the empire—diplomats, statesmen, generals, admirals, judges, and men of distinction in the domain of scholarship. The council's meetings are not public although minutes of the proceedings are kept.

ITS POWERS.

As respects their powers and functions, however, the Japanese and British privy councils are entirely dissimilar. The powers of the British privy council are almost wholly exercised by the cabinet, which is an offshoot from the council. The powers of the privy council in Japan, according to constitutional theory, are merely consultative: it advises the emperor when he asks its advice and on no other occasion. But in fact it does a good deal more than this. Questions relating to the interpretation of the constitution or the organic laws are referred to it for decision and its rulings are accepted. It passes upon treaties and certain imperial ordinances. Measures which the cabinet has recommended to the emperor are frequently submitted to the privy council and the council sometimes advises that these measures be sent back to the cabinet for amendment. The privy council is not responsible to parliament.

Another participant in the giving of advice to the throne is the *genro* or group of elder statesmen. No provision was made for such a group in the constitution. Originally the elder statesmen were a few

[1] That is why President Roosevelt, in December, 1937, requested that a protest which the United States sent to the Japanese foreign office should be communicated directly to the emperor.

able and experienced men who, beginning about 1900, assumed the duty of advising the emperor whenever an emergency arose—such as the resignation of one cabinet and the formation of another, a proposed declaration of war, or the negotiation of important treaties. At the outset the group included some six or seven members. But as these original members died their places were not filled, and today there is only one left (Prince Saionji). Although over eighty years of age this sole survivor is always summoned for consultation by the emperor when a new prime minister is to be chosen or whenever any other official action of great importance is to be taken. It is assumed that when Prince Saionji dies the institution will come to an end; but a few years ago, in the course of a ministerial crisis, the emperor called together a group of former prime ministers for consultation. This action has been taken in some quarters to mean that the practice of seeking confidential advice at times from a small, extra-legal group of elder statesmen may prove to be a permanent feature of Japanese government.

THE "GENRO."

Under the general direction of the ministers the work of public administration in Japan is carried on by the civil service. There has been a civil service system in Japan since 1885—almost as long as in the United States.[1] All administrative positions except the very highest are now filled under civil service rules. Competitive examinations are largely used, but other evidences of qualification may be substituted in exceptional cases. In the case of examinations for the higher posts the method of rating the candidates is left to the committee in charge, but no means are certified to fill specific vacancies. The entire list of successful candidates is given to the appointing authorities and the choice of anyone on the list is at their discretion. This differs from the usual American practice, which is to submit the three highest names and to require that one of these be selected.

THE CIVIL SERVICE.

Promotions in the Japanese civil service are not made in accordance with any regular system of personal ratings although certain efficiency records are kept and utilized. Seniority counts for a great deal in Japan, both inside and outside the government service. Political influence is by

PROMOTIONS AND DISMISSALS.

[1] See the materials relating to "The Japanese Civil Service" by S. T. Takeuchi in Leonard D. White, editor, *The Civil Service in the Modern State* (Chicago, 1930), pp. 513–563.

no means a negligible factor in connection with appointments and promotions but it is not the controlling one, as so often happens in the United States. Nor are numerous dismissals ordered when a new administration comes into power. There are securities against compulsory separation from the service. Public employees in Japan look upon the government service as a career; they are reasonably well paid as Japanese salaries go, and are entitled to a pension on retirement. With certain exceptions they are permitted to organize but their organizations must not affiliate with any union of workers in private employment.

THE JAPANESE PARLIAMENT

The imperial Japanese parliament is composed of two chambers, a House of Peers and a House of Representatives. Both meet for annual sessions in a palatial structure which has recently been built in the center of Tokyo at a cost of over eight million dollars. The Japanese House of Peers is not the product of a historical evolution like the British House of Lords. Nor is it, like the latter body, almost wholly composed of members who have inherited their seats. On the contrary about half its members are not peers at all, that is, they do not belong to a hereditary caste. The members of this half are appointed or elected, either for life or for a term of years.

THE HOUSE OF PEERS.

The hereditary element in the House of Peers includes all members of the imperial family over twenty-one years of age, likewise all princes and marquises over thirty.[1] Counts, viscounts, and barons are not, as such, entitled to seats, but have the right to choose a designated number from their own ranks for terms of seven years. There are about 200 members of the nobility in the House. In addition to these peers by birth the heavier taxpayers elect, in each prefecture, one or two representatives who are thereupon appointed to the House of Peers by the emperor for seven-year terms. Likewise the Imperial Academy of Japan (a body consisting of the empire's most notable savants) is entitled to be represented by four of its members to serve for a similar term. Finally, there is a large group (about 125) made up of persons appointed for life by the emperor on the recommendation of the prime

ITS COMPOSITION.

[1] The rank of "prince" in Japan is not confined to members of the imperial family. It may be conferred (like that of "duke" in England) upon persons outside the court circle.

minister because of their meritorious services to the public welfare. These constitute the most active and the most influential members of the Japanese upper chamber. Most of them are men who have served in public office or who have had a large amount of administrative experience in business enterprises.

ITS ORGANIZATION AND POWERS.

The organization of the House of Peers is not fixed by the constitution but by an imperial ordinance which accompanied the constitution. It cannot be changed except with the consent of the House itself. The powers of the House of Peers are substantially the same as those of the House of Representatives except that appropriations must originate in the lower House. But unlike the British House of Lords, which cannot amend or reject money bills, the Japanese House of Peers may deal as it pleases with such measures. In this respect its authority is similar to that of the United States Senate. But it does not have the power to try impeachments—a function which belongs to the upper chamber in both the United States and Great Britain.

ITS INFLUENCE.

The House of Peers exercises a much larger influence upon public policy in Japan than does its prototype in Great Britain. This is because it has not been stripped of important powers, as the latter was by the Parliament Act of 1911. On the other hand the Japanese upper chamber does not play the highly important part which has been assumed by the Senate in the American system of government. There are three reasons for this, *first*, because it has no important special powers; *second*, because it is not an elective body and cannot regularly stand up against the will of the lower chamber which is elective; and, *third*, because the cabinet (although theoretically responsible to neither of the Japanese chambers) has in practice quite naturally shown itself more deferential to the elective one. One might say, perhaps, that the Japanese House of Peers occupies a place somewhat similar to that of the Senate in the French Republic, although these two bodies are quite differently constituted.

THE HOUSE OF REPRESENTATIVES.

The House of Representatives in Japan is composed of about 450 members elected by the people. The country is divided into constituencies, each of which elects from three to five representatives by secret ballot. The suffrage includes all male Japanese citizens twenty-five years of age and over; but candidates for election must have attained the age of thirty years. Members of the nobility and persons in active military service

are not permitted to vote or to become candidates at elections for the House of Representatives. Women have not yet been enfranchised in Japan. Some years ago a measure giving them the right to vote in local elections passed the lower House but failed to find favor in the House of Peers.

NOMINATIONS.

There are no primaries or party conventions for the nomination of candidates in Japan. Any eligible person may announce his own candidature for the Japanese House of Representatives by filing a notice and depositing a designated sum in cash or government bonds as a guarantee that his hopes of election have some real basis. The amount required is 2,000 yen, or about $700 at present rates of exchange. The deposit is forfeited if the candidate fails to receive at least one tenth of the polled votes which might have been cast for him. This, of course, is an arrangement which closely parallels the British system of candidacy for election to the House of Commons.[1]

ELECTIONS.

As a matter of practice, however, each political party in Japan puts forward its regular candidates, selected by the party leaders, and provides the deposit whenever the candidate is not able or willing to do it for himself. Independent candidates have little chance of being elected. Those who obtain the highest pluralities are elected; a clear majority is never required. There is no regular system of proportional representation, although the practice of electing three or more representatives from each constituency gives the minority parties a chance. This is because the voter must designate his choice for a single candidate only, when there are three, four, or five to be elected. Those who are elected hold office for a four-year term unless the House is sooner dissolved, which sometimes happens. While the election is by secret ballot no printed ballots are provided. At the polling booth the voter is given a blank sheet of paper upon which he writes the name of a single candidate. He may write it in Japanese, Chinese, or Korean characters, or in letters of the Roman alphabet such as we use in English. The supervision of the polls, as in France, is entrusted to the mayors and other executive officers of local government, not to specially appointed polling officials as in America.

Japanese campaign methods are much more restrained than are those now in vogue in English-speaking countries. Campaign expenses are rigidly limited by law and all legitimate expenditures must

[1] See *above*, p. 175.

be made through regularly appointed campaign managers. There is, however, a general belief that in recent election campaigns the rival political parties have spent more money than the law allows. In addition to the limitation upon legitimate expenditures the Japanese election laws forbid the use of the radio for campaign speeches, the canvassing of voters either in person or by telephone, or the holding of parades and street rallies. Even the campaign posters are restricted to a certain size. But speechmaking by the candidate and his friends is freely permitted and campaign literature may be sent to voters through the mails on payment of the regular postage. Great quantities of it are distributed during the days preceding the election.

CAMPAIGN METHODS.

It is an axiom of Japanese politics that the party in power always wins the election. This proposition, as a matter of fact, does not always prove true, nevertheless the government manages the entire election machinery and this gives it a great advantage. The local government system of Japan, as will be explained later, is such that the cabinet can exercise complete control over it—and the local officers conduct the elections. The minister for home affairs, who in this way serves as head of the entire electoral system, is sometimes generalissimo or chief strategist for the government party as well. The incentive to unfairness which is involved in this relationship must be tolerably self-evident. Yet Americans should not be amazed at it, for they have seen, in recent years, the national government's chief dispenser of patronage serving also as the national chairman of the party in power.

GOVERNMENT CONTROL OF ELECTIONS.

Procedure in the Japanese House of Representatives is much like that of the British House of Commons. There is a speaker, or presiding officer, chosen by the House, and he strives to keep aloof from all party entanglements. There are standing committees, the members of which are selected by party caucuses, as in the United States, and subsequently ratified by the House. As the standing committees are few (only four or five in number) the practice of appointing special committees has become common. Each committee elects its own chairman. The Anglo-American device of sitting as a Committee of the Whole is also quite freely used. Bills may be introduced by the government or by a private member, but in the latter case at least twenty members must join in sponsoring the measure. All government bills are referred to

LEGISLATIVE PROCEDURE.

a committee, but the committee hearings are not public. No testimony is taken by the committees, which merely discuss the measure with members of the government or members of the House. Bills introduced by private members go sometimes to a standing committee and sometimes directly to the Committee of the Whole. The Japanese have adopted the Anglo-American rule that every bill must be given three readings, but the first and third readings are for the most part perfunctory. The closure can be used, as at Westminster, to shorten debate and prevent obstruction. Votes are taken by asking the members to rise and be counted. In case of doubt the members file past a box and drop white or black balls into it,—the former indicating *Yea* and the latter *Nay*. In fact the Japanese have copied their procedure from the Mother of Parliaments with scrupulous fidelity.

PROPOSALS TO SPEND MONEY.

But there is one important feature in which they have not followed the usages of the British House of Commons. In that body no proposal to spend money can be considered unless it is first approved by a member of the cabinet.[1] But any thirty members can propose an appropriation in the Japanese lower House, although its chances of adoption are not large if the ministers are opposed. Certain categories of items in the Japanese budget, moreover, cannot be either raised or lowered by parliament unless the cabinet agrees. Among these are the imperial civil list and house expenditures, the salaries of officials which have been established by law, and "such expenditures as relate to the legal obligations of the government." Rather curiously, the budget in Japan does not have the status of a law, as in most other countries. It is merely a parliamentary approval of the government's authorization to spend. And if the Japanese parliament fails to pass a budget the government may go ahead and expend the amounts which were provided in the budget of the preceding year.[2]

All important measures, in Japan as in Great Britain, are introduced by the government. The government may be questioned at any time and on any subject, but the replies to such questions are not followed by votes of confidence as under the interpellation procedure in the French Chamber of Deputies. Bills introduced

[1] See *above*, p. 252.

[2] As a matter of fact it has devised ways of spending larger sums than were provided in the budget of the preceding year. For an explanation of this see H. S. Quigley, *Japanese Government and Politics* (New York, 1932), pp. 191–192.

by private members, no matter what they relate to, have about one chance in ten of materializing into law as the statistics show. In the case of government bills this ratio is almost exactly reversed. Before it can become law a bill must be enacted in identically similar form by both houses and if neither is willing to recede from its amendments a committee of conference attempts to reconcile the disagreement.

GOVERNMENT MEASURES AND PRIVATE MEMBERS' BILLS.

Japanese laws are passed in general terms, leaving the details to be supplied by imperial ordinances which are framed by the ministry. When parliament is not in session the ministry may cause ordinances to be issued on urgent matters even outside the provisions of the laws. But such ordinances cease to have validity unless they are ratified by both houses of parliament at their next session. A great deal of legislation in Japan is by ordinance, regular or emergency.

ORDINANCES.

JAPANESE POLITICAL PARTIES

The experience of Japan supports the dictum of Lord Bryce that political parties are inevitable and that no system of truly representative government can be carried on without them. The establishment of parliamentary government in Japan was quickly followed by the emergence of nearly a dozen political parties. These presently coalesced into four or five, of which the Liberals and Progressives were the most influential. During these years the members of the cabinet tried to hold themselves aloof from party affiliations. It was their belief that while parties might have their place in parliament they should not be permitted to influence the executive branch of the government because the latter was supposed to act in the interests of the whole people, impartially. Ministerial independence, not ministerial responsibility, was given the emphasis. But in the course of time the prime ministers found it essential to recognize the party organizations in making up their cabinets, for otherwise their relations with parliament were likely to be troublesome. This recognition was rather spasmodic, however, because no single party was strong enough to control a majority in the House of Representatives. Or, if one of the parties secured a majority at the elections, it usually developed internal dissensions when its leaders were placed in ministerial office.

EARLIER HISTORY.

The history of Japanese politics during the past forty years, there-

fore, is the chronicle of a long-continued struggle, not yet ended, between two divergent philosophies of parliamentary government. On the one hand there are those who argue that since the emperor is aloof from all party affiliations his advisers should be in a like situation. In other words they contend that the ministers should not be chosen from among the leaders of the dominant party group, as in Great Britain, but should be selected without reference to party, which means that they should be chosen, for the most part, from outside the membership of parliament altogether. On the other hand the party leaders have consistently maintained that the will of the people at the polls cannot be carried into effect unless their action is regarded as a mandate in the formation of a ministry. From time to time it has seemed as if the principle of partisan responsibility was obtaining a secure foothold in Japan, but the national tradition is against it and the issue is not yet settled.

TWO DIVERGENT PHILOSOPHIES OF PARTY GOVERNMENT.

Meanwhile two strong party organizations have evolved from the kaleidoscopic shiftings of the past four decades. There are minor groups as well, but they are not at present of much political consequence. The two strong parties are known as the *Seiyukai* and the *Minseito*. Not by literal translation but by their general programs they may be designated as the Imperial and Democratic parties respectively,—although both profess their adherence to democratic principles. The *Seiyukai* is the party of Japanese expansion. Its strength at the polls is derived from various sources, but it is especially strong among the larger landowners. It has supported the government's expansionist enterprises in Manchukuo and Northern China. Measures for the development of foreign trade, by the underselling of Japan's competitors, have also had this party's support. With respect to internal affairs the *Seiyukai* is more conservative than its chief rival. Its party funds have been supplied, to a considerable extent, by the giant Japanese financial and business aggregation known as the Mitsui.

PRESENT-DAY PARTIES:

1. THE "SEIYUKAI."

As for the *Minseito* it is the party of curtailed expansion, balanced budgets, the maintenance of the gold standard, financial retrenchment, national economic planning, and political reform. Its program includes a demand for woman suffrage and for proportional representation. The strength of this party likewise comes from a variety of sources but it is

2. THE "MINSEITO."

especially strong among the lesser industrialists of Japan. For financial support its affiliation is with the other great aggregation of banking and business interests known as the Mitsubishi. Thus we have a phenomenon which is not uncommon in the politics of western countries, namely, that of great financial and business interests battling each other behind a smoke screen of political parties.

In addition to this pair of outstanding bourgeois party organizations there have been several proletarian party groups in Japan. There is a Labor party with a program which includes trade union recognition and collective bargaining, but it has not been politically active during the past few years. There is also a Socialist Popular party. Some years ago there was a Communist party in Japan but it has been virtually extinguished by rigorous governmental persecution. This does not mean that there are no longer any groups of communist leanings in Japan; there is reason to believe that there are many such, especially among the younger voters, but they are not articulate just now. At recent elections the *Minseito* and the various proletarian groups have shown increased strength at the polls.[1] This has greatly disturbed the strongly nationalist elements in Japan, to which the proletarian groups are opposed, and has led the former to conduct a campaign of denunciation against political parties in general. They have been branded as a corrupting importation from the effete political systems of the Western World. This may be a prelude to the attempted shifting of the government to a fascist or semi-fascist basis.

3. THE PROLETARIAN GROUPS.

The Japanese army can hardly be called a political party, but to a considerable extent it functions as one,—making its influence felt in the determination of all governmental policies. Members of the supreme command are political as well as military tacticians, and the army maintains a loyalty to its higher officers which goes beyond the requirements of military discipline. The Japanese army comes from the people; its junior officers and the men in its ranks are drawn from the sons of shopkeepers, artisans, and small farmers. They reflect the opinions of the social environment from which they come. There are reasons for believing that there is a strong proletarian sentiment in the Japanese army, an undercurrent of feeling adverse to the big finan-

THE ARMY AS A POLITICAL FACTOR.

[1] At the election of 1936 the *Minseito* gained 205 seats, the *Seiyukai* 175, and the Socialist Popular party 15 seats in the House of Representatives.

cial interests, and an impatience with the seemingly futile manoeuverings of the regular parliamentary groups. When a portion of the Tokyo garrison, under the leadership of its younger officers, mutinied a few years ago and killed several members of the government, the incident gave the civilian political leaders something to think about. What the army wants is a very important factor in Japanese politics. The dangers involved in such a situation do not have to be dilated upon. Americans have often seen them exemplified in the republics south of their own borders. For nowhere else has military dictatorship in politics found more fertile soil than in the long stretch from the Rio Grande to Cape Horn.

PARTY ORGANIZATION.

The organization of the major Japanese political parties is fashioned generally upon the English model. There is an annual conference or convention of party delegates. This body prepares or revises the party's program and elects its president or leader. As a matter of practice these functions are performed in advance of the meeting by a few seasoned elder politicians in the party, and the conference merely ratifies their actions. Between conferences the affairs of the party are managed from national party headquarters which each maintains for itself in Tokyo—with a staff of paid officers. Party organization is carried down into the prefectures, with an annual party convention or conference in each of these divisions, and a president or leader for the party in each of them. Within the prefectures there are local organizations for all the cities as well as for most of the towns and villages. Each organization raises and spends its own funds, the national headquarters contributing little or nothing to the local units of the party.

THE JUDICIAL SYSTEM

JAPANESE JURISPRUDENCE.

The legal system of Japan has been heavily influenced by the Napoleonic and German codes. It is replete with features somewhat hastily drawn from the jurisprudence of these European compilations. After the establishment of the new régime in 1868 a beginning was made towards the remodelling of the legal system, but the work was not completed until 1908 when several codes were promulgated,—codes of constitutional law, criminal law, commercial law, and codes of civil and criminal procedure. All were cast in the mould of Continental European jurisprudence which traces its descent from the *Corpus Juris* of imperial

Rome. Relatively few features of indigenous Japanese law now survive.[1]

According to the Japanese constitution the judicial power belongs to the emperor but must be exercised by him through "independent courts of law." These regular law courts, as they have been established, are of four gradations. First there are local courts which deal with minor offenses and with civil controversies where the amount at issue is small. Each local court has a single judge. Above these are district courts with more extended jurisdiction. Seven courts of appeal from these district courts are located in various parts of the country, and, finally, there is a court of cassation or supreme court which sits at Tokyo in nine sections of five judges each. Provision for trial by jury is made in the district courts only and even there the jury system is not widely used.

THE REGULAR COURTS.

The judges of all the Japanese courts are appointed for life, but must retire when they reach an age limit which is fixed by law. Appointments are made on the recommendation of the minister of justice. Prosecuting attorneys, or procurators are attached to each of the higher courts; they are also appointive and have life tenure. The procedure in criminal cases is quite different from that to which we have grown accustomed in the United States. There is no grand jury. A complaint is filed and the procurator then decides whether to hold the accused for trial. Or, if the offense is a serious one, a preliminary hearing is held by one of the judges of the district court. These hearings are not public and the accused is not permitted to be accompanied by counsel. Nor is there any writ of habeas corpus to get him out of custody when the hearings are prolonged. If the accused is held for trial as the result of the preliminary hearing the trial is ordinarily public, but it can be held behind closed doors if the presiding judge so determines. The procedure is much like that followed in France: the procurator makes an opening statement, the accused is then examined, and the various witnesses follow. The presiding judge asks the questions and the counsel for the accused must do his cross-examining through the judge—which means that he does very little of it. Witnesses are allowed the utmost latitude in testifying, for there are very few rules of evidence.

JUDICIAL PROCEDURE.

The trial jury in Japan is made up of twelve male citizens, selected

[1] For a full account see the article on "Japanese Law" in the *Encyclopaedia of the Social Sciences*, Vol. IX, pp. 254–257.

from a panel, with both sides allowed the privilege of challenging. But the jury is not selected in open court The presiding judge, the procurator, and the counsel for the accused do the selecting before the trial begins. And the verdict is determined by a majority; there is no requirement that the jurors shall be unanimous. Nor are the judges bound to follow the jury's verdict, although they usually do unless the vote is a tie. They may order a new jury chosen, and the trial held over again, if they are dissatisfied with the verdict. The accused may waive his right to a jury trial except in the most serious cases, and most defendants do so, preferring to be tried by the judges alone. It should be remembered, however, that the jury system has been operating in Japan for a very short time—only since 1928 -and the people have not yet become used to it.

JURY TRIALS.

As in the countries of Continental Europe a distinction is made in Japan between ordinary and administrative law, between ordinary and administrative courts. But Japan has one administrative court only. Jurisdiction, in cases involving administrative law, is exercised by this court of administrative litigation, as it is called. Its judges are appointed for life on recommendation of the prime minister. The competence of the court extends to all matters in which the chief issue is the validity of some administrative act. More particularly it deals with controversies between individuals and the governmental authorities concerning taxes, licenses, abuses of power on the part of public officers, boundaries between public and private lands, and so forth. It does not have anything to do with criminal accusations against public officials; these are tried in the ordinary courts.

ADMINISTRATIVE COURTS.

When a dispute arises in Japan as to whether a case should be tried in the administrative court or in the ordinary courts, who settles it? In France, it will be recalled, there is a special court of conflicts endowed with this power. Some years ago it was provided that there should be set up in Japan a "court of competence dispute" to deal with such questions, but this court has not yet been established. In the meantime the privy council is supposed to take the responsibility for settling jurisdictional disputes between the court of cassation and the court of administrative litigation, but it has established no regular procedure for doing so. Fortunately there has been little or no occasion for calling upon its services.

CONFLICTS OF JURISDICTION.

LOCAL GOVERNMENT

For purposes of local government Japan is divided into forty-six prefectures and the territory of Hokkaido. Each has a prefect (or local governor) as in France. This official is appointed on recommendation of the minister for home affairs (who is entrusted with the supervision of local government in Japan), and a prefect's appointment is political in that he usually goes out of office when a new minister comes in. The Japanese prefect, like the French, occupies a dual position. On the one hand, and primarily, he is the administrative and political agent of the central authorities. As such he carries out the minister's instructions and incidentally tries to promote the political strength of the party in power. The prefectures are the main centers through which the powers of the imperial government are radiated. Being in charge of the police, and responsible for the enforcement of the laws, the prefects are the agents upon whom the imperial government depends for the maintenance of order. But the prefect is also the executive head of his own little province. In this work he is assisted by three or more chief administrative assistants who are appointed by the minister for home affairs and by a large subordinate staff, the members of which are chosen by the prefect under civil service regulations.

PREFECTS AND PREFECTURES.

In each prefecture there is a legislative body, made up of two branches. More accurately it is a single body which delegates part of its functions to a smaller group chosen from within its own ranks. The larger body is known as the prefectoral assembly, the smaller one as the council of the prefecture. Members of the assembly are elected by the people on a manhood suffrage basis. The assembly meets once a year for a session which lasts almost four weeks. All important matters relating to the local budget, taxation, public works, and so forth must be submitted to it by the prefect, but he is not obliged to follow its advice. If the prefect, with the approval of the home minister, makes up his mind to disregard a vote of the assembly there is nothing to prevent his doing so. On the other hand there is much to be gained by working in harmony with this representative body and the prefect is usually shrewd enough to realize that fact. The assembly selects from within its own membership a small council (usually of ten members) to serve during the interval

THE PREFECTURAL ASSEMBLY AND COUNCIL.

between its own annual sessions. The prefect is ex officio chairman of this body and while he submits many matters to it for approval he is not bound to abide by its decisions. In brief the government of a Japanese prefecture is very much like that of a French department, but with two differences: (1) the central authorities in Japan have a larger measure of control, and (2) the elected representatives of the people have less power in relation to the prefect.

Within the Japanese prefectures there are cities, towns, and villages. All have substantially the same general framework of local government and the same general powers, although the larger cities have some additional privileges. Tokyo, the capital, is under a somewhat special régime. Each municipality has a mayor who is not elected by popular vote but is chosen by the municipal assembly. One or more adjoints or deputy mayors are similarly selected to assist him in his work. The assembly does not usually make these selections from within its own ranks but chooses men who have had administrative experience. The mayor or his deputies appoint the subordinate officers of municipal administration and there are no civil service restrictions upon their freedom of choice. Consequently the spoils system is about as deeply lodged in Japanese cities as in American. Like the prefect, who is his immediate superior, the mayor acts in a dual capacity. He is the municipal agent of the imperial authorities; he is also the executive head of his own municipality and as such must work in harmony with the assembly.

MUNICIPAL GOVERNMENT: THE MAYOR.

Members of the municipal assembly are elected by manhood suffrage for four-year terms. This assembly is the legislative organ of the municipality and its approval is required for the validity of the municipal budget as well as in all matters relating to local taxation, borrowing, public works, public health, poor relief, and public utilities. Within this field the mayor cannot act alone; he must have the assembly's approval. The latter is, therefore, a good deal more than an advisory body. But the assembly has nothing to do with local police administration, fire protection, or franchises to public utility concerns. These functions are reserved to the higher authorities. The latter, moreover, may veto any action taken by the mayor and the assembly within their own field of jurisdiction. They may, as in France, dismiss a mayor and dissolve a municipal assembly. To serve while it is not in session the assembly selects from its own membership a committee or council

THE MUNICIPAL ASSEMBLY.

which the mayor calls together at frequent intervals in executive session. In the smaller municipalities no council is set up, and in the smaller villages the assembly is sometimes replaced by a general meeting of all the villagers.

All in all, what has been said about local government in France can be reiterated with reference to Japan. Centralization is its essence, centralization raised to the n^{th} power. All authority converges inward and upward; the whole system can be charted in the form of a perfect pyramid. The result, in both countries, tends toward apoplexy at the center and paralysis at the extremities. A shrewd and far-seeing French student of democracy, Alexis de Tocqueville, once remarked that "local institutions constitute the strength of free nations" and concludes that even though a nation may have the forms of free government in its national framework it cannot have "the spirit of liberty" unless its municipal institutions are reasonably free from centralized control. There has been a movement in Japan for elective prefects as a first step towards popular responsibility in local government, but it has not made much headway.

A HIGHLY CENTRALIZED SYSTEM.

THE OVERSEAS EMPIRE

The overseas empire of Japan includes Formosa, Korea, and the southern half of Saghalien. In addition there is a leased territory on the mainland (Kwantung), and Manchukuo is virtually a Japanese protectorate. Japan, moreover, holds the mandate for various islands which belonged to pre-war Germany. Formosa has an appointive governor-general with various directors of administrative bureaus and services. All are Japanese. There is a council made of officials and laymen, some of whom are Formosans, but it has merely consultative functions. Korea has a similar government but more elaborate in its arrangement of departments, bureaus, and other administrative services. There is a large advisory council, made up chiefly of Koreans who are appointed on nomination of the governor-general. The latter, by the way, is always a Japanese army or naval officer of high rank. He is virtually supreme in all matters of Korean administration, subject only to instructions from Tokyo. This responsibility is to the Japanese prime minister rather than to the minister for overseas affairs.

GOVERNMENT OF DEPENDENCIES.

FORMOSA.

KOREA.

Japanese Saghalien is virtually administered as a prefecture, but its prefect or governor has wider powers than those given to his colleagues in Japan proper. While the province of Kwantung technically belongs to China it is "leased" to Japan and the Japanese administer it. The Japanese ambassador to Manchukuo is governor of Kwantung and commander of the Kwantung army. As for Manchukuo it has its own emperor and government is carried on in his name, but all his chief advisers are Japanese. The mandated islands are governed through the director and staff of a bureau which is located on one of them, with branches on some of the others.

OTHER TERRITORIES.

Japan has been pouring money into all her overseas possessions. Her policy has been to develop the economic resources of these territories before granting them any measure of self-government. It is believed by Japanese statesmen of all political parties that in none of the overseas dependencies is the time nearly ripe for home rule. Nor is it likely to be until economic prosperity has been established, education developed, and suspicions of sinister Japanese purposes allayed. Japanese rule, of course, is not popular in her dependencies, but this is no matter for surprise. Great Britain in India and the United States in the Philippines have encountered the same antipathy, despite all that they have done for economic and social uplift there. The Japanese government appears to cherish the hope that by maintaining law and order, improving the methods of agriculture, developing industries and fostering trade they will induce the Chinese, Koreans, and other subject peoples to look with a kindly eye on foreign overlordship. But if that hope is ever fulfilled it will mark a new era in the history of colonial expansion.

NO COLONIAL SELF-GOVERNMENT.

Meanwhile the attempt of Japan to bring China to terms by armed pressure may have repercussions on Japanese government, the nature of which cannot be predicted. The cost of this enterprise will be a heavy strain upon an already overburdened national budget. It will necessitate heavy borrowings, most of which must come from the Japanese themselves, and a severe increase in the tax levies. Success in the venture would mean a strengthening of the military influence in Japanese government and might well lead to a further impairment of the parliamentary system. The likelihood of a fascist government in Japan is greater today than it ever was, and it can only be avoided, if at all, by the greatest of good fortune.

The most informing book in English on the government of Japan is Harold S. Quigley, *Japanese Government and Politics* (New York, 1932), a volume to which the foregoing chapter is considerably indebted. There are good bibliographies at the close of each chapter in Professor Quigley's book. W. W. McLaren, *Political History of Japan during the Meiji Era* (New York, 1916), gives an excellent survey of developments down to its date of publication and his *Japanese Government Documents* published by the Asiatic Society of Japan in 1914 will also be found useful. A readable outline of the Japanese governmental system is given in N. Kitazawa, *The Government of Japan* (Princeton, 1929). A book on *Government in Japan* by A. E. Hindmarsh is announced for early publication. No attempt to plough beneath the surface of Japanese constitutional philosophy should be made without consulting the authoritative *Commentaries on the Constitution of the Empire of Japan* by Hirobumi Ito. A second edition of this volume was published at Tokyo in 1906. See also K. Hamada, *Prince Ito* (London, 1937).

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The *Japan Year Book* and the *Japan-Manchukuo Year Book*, published annually in Tokyo, contain full statistical information.

INDEX